Board of Directors of the
Clean Power Alliance of Southern California
Regular Meeting
Thursday, July 6, 2023
2:00 p.m.

Visit CPA’s YouTube Channel to view a Live Stream of the Meeting
*There may be a streaming delay of up to 90 seconds. This is a view-only live stream.

CPA Office
801 S. Grand Ave., Suite 400
Los Angeles, CA 90017

Members of the public may also participate in this meeting at the following locations:

<table>
<thead>
<tr>
<th>Calabasas City Hall</th>
<th>Ventura County Government Center</th>
</tr>
</thead>
<tbody>
<tr>
<td>Council Conference Room</td>
<td>Channel Islands Conference Room, 4th Floor</td>
</tr>
<tr>
<td>100 Civic Center Way</td>
<td>Hall of Administration</td>
</tr>
<tr>
<td>Calabasas, CA 91301</td>
<td>800 South Victoria Avenue</td>
</tr>
<tr>
<td></td>
<td>Ventura, CA 93009</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Whittier City Hall</th>
<th>South Bay Cities Council of Governments</th>
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<tbody>
<tr>
<td>Admin Conference Room</td>
<td>Conference Room</td>
</tr>
<tr>
<td>13230 Penn Street</td>
<td>2355 Crenshaw Blvd., Suite 125</td>
</tr>
<tr>
<td>Whittier, CA 90602</td>
<td>Torrance, CA 90501</td>
</tr>
</tbody>
</table>

PUBLIC COMMENT: Members of the public may submit their comments by one of the following options:

- **Email Public Comment**: Members of the public are encouraged to submit written comments on any agenda item to clerk@cleanpoweralliance.org up to four hours before the meeting. Written public comments will be announced at the meeting and become part of the meeting record. Public comments received in writing will not be read aloud at the meeting.

- **Provide Public Comment During the Meeting**: The General Public Comment item is reserved for persons wishing to address the Board on any Clean Power Alliance-related matters not on today’s agenda. Public comments on matters on today’s Consent Agenda and Regular Agenda shall be heard at the time the matter is called. Comments on items on the Consent Agenda are consolidated into one public comment period. Members of the public who wish to address the Board at CPA’s Office are requested to complete a comment card and provide it to staff. If you are attending from a remote location, please identify yourself to a CPA representative when your item is called. Each speaker is limited to two (2) minutes (in whole-minute increments) per agenda item with a cumulative total of five 5 minutes to be allocated between the General Public Comment, the entire Consent Agenda, or individual items in the Regular Agenda. Please refer to Policy No. 8 – Public Comment for additional information.
CALL TO ORDER AND PLEDGE OF ALLEGIANCE

ROLL CALL

GENERAL PUBLIC COMMENT

CONSENT AGENDA
1. Approve Minutes from June 1, 2023, Board of Directors Meeting
2. Adopt Resolution No. 23-07-053 to Approve Amendments to the Energy Risk Management Policy, as Recommended by the Energy Resources & Planning Committee
3. Adopt Resolution 23-07-054 Approving (a) the Net Billing Tariff (NBT) and (b) Amendments to the Net Energy Metering (NEM) Tariff, as Attached
4. Approve and Authorize the Chief Executive Officer to Execute an Amendment to the Professional Service Agreement with Pastilla, Inc. for FY 2023/24 for a Not to Exceed (NTE) Amount of $392,076 for Website Development and Market Research
5. Approve Positions on Two Bills in the 2023/2024 Legislative Session Related to Changes to the California Environmental Quality Act (CEQA), as Recommended by the Legislative & Regulatory Committee:
   a. SB 420 - Recommended Position: Support
   b. AB 914 - Recommended Position: Support
7. Receive and File Community Advisory Committee Monthly Report

REGULAR AGENDA
Action Items
8. Approve and Authorize the Chief Executive Officer to Execute the Following Agreements:
a. 10-year Power Purchase Agreement with Community Renewable Energy Services, Inc. for the Dinuba Energy 11.5 MW Biomass Project; and,
b. 15-year Energy Storage Agreement with Sagebrush ESS IIB, LLC (Sagebrush) for a 40 MW Four-Hour Energy Storage Project

Information Item(9,6),(990,983)
10. Presentation on Local Programs for a Clean Energy Future Action Plan

MANAGEMENT REPORT

COMMITTEE CHAIR UPDATES
Director Deborah Klein Lopez, Chair, Legislative & Regulatory Committee
Director Susan Santangelo, Chair, Finance Committee
Director Robert Parkhurst, Chair, Energy Planning & Resources Committee

BOARD MEMBER COMMENTS

REPORT FROM THE CHAIR

ADJOURN – NO MEETING IN AUGUST. NEXT REGULAR MEETING ON SEPTEMBER 7, 2023

Public Records: Public records that relate to any item on the open session agenda for a regular Board Meeting are available for public inspection. Those records that are distributed less than 72 hours prior to the meeting are available for public inspection at the same time they are distributed to all, or a majority of, the members of the Board. Public records are available for inspection at CPA’s Office at 801 S. Grand Ave., Suite 400, Los Angeles, CA 90017, or online at www.cleanpoweralliance.org/agendas.
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>BESS</td>
<td>Battery Energy Storage System</td>
</tr>
<tr>
<td>CAC</td>
<td>Community Advisory Committee</td>
</tr>
<tr>
<td>CAISO</td>
<td>California Independent System Operator</td>
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<tr>
<td>CALCCA</td>
<td>California Community Choice Association</td>
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<td>CalEVIP</td>
<td>California Electric Vehicle Incentive Program</td>
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<tr>
<td>CARB</td>
<td>California Air Resources Board</td>
</tr>
<tr>
<td>CARE</td>
<td>California Alternate Rates for Energy (Low Income Discount Rate)</td>
</tr>
<tr>
<td>CCA</td>
<td>Community Choice Aggregation</td>
</tr>
<tr>
<td>CEC</td>
<td>California Energy Commission</td>
</tr>
<tr>
<td>CPUC</td>
<td>California Public Utilities Commission</td>
</tr>
<tr>
<td>DA</td>
<td>Direct Access (Private Retail Energy Supplier)</td>
</tr>
<tr>
<td>DAC</td>
<td>Disadvantaged Community (As Defined by Calenviroscreen 3.0)</td>
</tr>
<tr>
<td>DER</td>
<td>Distributed Energy Resources</td>
</tr>
<tr>
<td>DR</td>
<td>Demand Response</td>
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<tr>
<td>ERMP</td>
<td>Energy Risk Management Policy</td>
</tr>
<tr>
<td>ERRA</td>
<td>Energy Resource Recovery Account (SCE Generation Rate Setting)</td>
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<tr>
<td>ESA</td>
<td>Energy Storage Agreement</td>
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<tr>
<td>EVSE</td>
<td>Electric Vehicle Supply Equipment (EV Charger)</td>
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<tr>
<td>FERA</td>
<td>Family Electric Rate Assistance (Low Income Discount Rate)</td>
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<tr>
<td>GHG</td>
<td>Greenhouse Gas</td>
</tr>
<tr>
<td>IOU</td>
<td>Investor Owned Utility</td>
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<tr>
<td>IRP</td>
<td>Integrated Resource Plan</td>
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<tr>
<td>JPA</td>
<td>Joint Powers Authority</td>
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## Commonly Used Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kwh</td>
<td>Kilowatt-Hour (A Measure of Energy Used in A One-Hour Period)</td>
</tr>
<tr>
<td>Kw</td>
<td>Kilowatt = 1,000 Watts (Watt = A Measure of Instantaneous Power)</td>
</tr>
<tr>
<td>LSE</td>
<td>Load Serving Entity</td>
</tr>
<tr>
<td>MB</td>
<td>Medical Baseline (Discount Rate for Medical Equipment Needs)</td>
</tr>
<tr>
<td>MW</td>
<td>Megawatt = 1,000 Kilowatts</td>
</tr>
<tr>
<td>Mwh</td>
<td>Megawatt-Hour = 1,000 Kilowatt-Hours</td>
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<tr>
<td>NEM</td>
<td>Net Energy Metering (Usually for Customers with Solar)</td>
</tr>
<tr>
<td>OAT</td>
<td>Other Applicable Tariffs</td>
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<tr>
<td>PCIA</td>
<td>Power Charge Indifference Adjustment (Can Be Called “Exit Fee”)</td>
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<tr>
<td>PCC1</td>
<td>Renewable Energy Generated Inside California</td>
</tr>
<tr>
<td>PCC2</td>
<td>Renewable Energy Generated Outside California</td>
</tr>
<tr>
<td>PCC3</td>
<td>A REC from A Renewable Resource, Delivered Without Energy</td>
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<tr>
<td>PCL</td>
<td>Power Content Label</td>
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<tr>
<td>POU</td>
<td>Publicly Owned or Municipal Utility</td>
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<tr>
<td>PPA</td>
<td>Power Purchase Agreement</td>
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<tr>
<td>PSPS</td>
<td>Public Safety Power Shutoff</td>
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<tr>
<td>PV</td>
<td>Photovoltaic (Solar) Panels</td>
</tr>
<tr>
<td>RA</td>
<td>Resource Adequacy</td>
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<tr>
<td>REC</td>
<td>Renewable Energy Credit</td>
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<tr>
<td>RPS</td>
<td>Renewables Portfolio Standard</td>
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<tr>
<td>T&amp;D</td>
<td>Transmission and Distribution</td>
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<tr>
<td>TOU</td>
<td>Time Of Use (Used to Refer to Rates that Differ by Time Of Day)</td>
</tr>
<tr>
<td>WECC</td>
<td>Western Electricity Coordinating Council</td>
</tr>
</tbody>
</table>
Staff Report – Agenda Item 1

To: Board of Directors

Subject: Approve Minutes from the June 1, 2023 Board of Directors Meeting

Date: July 6, 2023

RECOMMENDATION

Approve.

ATTACHMENT

1. Minutes
**MINUTES**
Board of Directors of the
Clean Power Alliance of Southern California
Regular Meeting
Thursday, June 1, 2023, 2:00 p.m.

Meeting videos are available on CPA's YouTube Channel.  
http://www.youtube.com/@CPApublicmeetings

Board members participated from the following locations:

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<tr>
<td>Governments</td>
<td>2355 Crenshaw Blvd., Suite 125 Torrance, CA 90501</td>
</tr>
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</table>

**CALL TO ORDER & ROLL CALL**
Vice Chair Lindsey Horvath called the meeting to order at 2:00 p.m. and Gabriela Monzon, Clerk of the Board, conducted roll call.

**PLEDGE OF ALLEGIANCE**
Director Calaycay led the pledge of allegiance.

<table>
<thead>
<tr>
<th>Roll Call</th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td><strong>Agoura Hills</strong></td>
<td>Deborah Klein Lopez</td>
<td>Director</td>
<td>Remote</td>
</tr>
<tr>
<td>2</td>
<td><strong>Alhambra</strong></td>
<td>Jeff Maloney</td>
<td>Director</td>
<td>Present</td>
</tr>
<tr>
<td>3</td>
<td><strong>Arcadia</strong></td>
<td>Michael Cao</td>
<td>Director</td>
<td>Present</td>
</tr>
<tr>
<td>4</td>
<td><strong>Beverly Hills</strong></td>
<td></td>
<td>Absent</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td><strong>Calabasas</strong></td>
<td>Ed Albrecht</td>
<td>Alternate</td>
<td>Remote</td>
</tr>
<tr>
<td>6</td>
<td><strong>Camarillo</strong></td>
<td>Susan Santangelo</td>
<td>Director</td>
<td>Remote</td>
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<tr>
<td>7</td>
<td><strong>Carson</strong></td>
<td>Cedric L. Hicks, Sr.</td>
<td>Director</td>
<td>Remote</td>
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<tr>
<td>8</td>
<td><strong>Claremont</strong></td>
<td>Corey Calaycay</td>
<td>Director</td>
<td>Present</td>
</tr>
<tr>
<td></td>
<td>City</td>
<td>Name</td>
<td>Position</td>
<td>Status</td>
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<tr>
<td>---</td>
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<tr>
<td>9</td>
<td>Culver City</td>
<td>Yasmine-Imani</td>
<td>Alternate</td>
<td>Present</td>
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<tr>
<td></td>
<td></td>
<td>McMorrin</td>
<td></td>
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<tr>
<td>10</td>
<td>Downey</td>
<td>Mario Trujillo</td>
<td>Director</td>
<td>Remote</td>
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<tr>
<td>11</td>
<td>Hawaiian Gardens</td>
<td>Ramie L. Torres</td>
<td>Alternate</td>
<td>Remote</td>
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<tr>
<td>12</td>
<td>Hawthorne</td>
<td>Alex Monteiro</td>
<td>Director</td>
<td>Present</td>
</tr>
<tr>
<td>13</td>
<td>Hermosa Beach</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Los Angeles County</td>
<td>Lindsey Horvath</td>
<td>Vice Chair</td>
<td>Present</td>
</tr>
<tr>
<td>15</td>
<td>Malibu</td>
<td></td>
<td></td>
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<tr>
<td>16</td>
<td>Manhattan Beach</td>
<td>Amy Howorth</td>
<td>Director</td>
<td>Remote</td>
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<tr>
<td>17</td>
<td>Moorpark</td>
<td>Renee Delgado</td>
<td>Director</td>
<td>Remote</td>
</tr>
<tr>
<td>18</td>
<td>Ojai</td>
<td>Betsy Stix</td>
<td>Director</td>
<td>Remote</td>
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<tr>
<td>19</td>
<td>Oxnard</td>
<td>Kathleen Mallory</td>
<td>Alternate</td>
<td>Remote</td>
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<tr>
<td>20</td>
<td>Paramount</td>
<td>Vilma Cuellar Stallings</td>
<td>Director</td>
<td>Remote</td>
</tr>
<tr>
<td>21</td>
<td>Redondo Beach</td>
<td></td>
<td></td>
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<tr>
<td>22</td>
<td>Rolling Hills Estates</td>
<td>Debby Stegura</td>
<td>Director</td>
<td>Remote</td>
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<tr>
<td>23</td>
<td>Santa Monica</td>
<td>Gleam Davis</td>
<td>Director</td>
<td>Present</td>
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<tr>
<td>24</td>
<td>Santa Paula</td>
<td>Jenny Crosswhite</td>
<td>Director</td>
<td>Present</td>
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<tr>
<td>25</td>
<td>Sierra Madre</td>
<td></td>
<td></td>
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<tr>
<td>26</td>
<td>Simi Valley</td>
<td>Rocky Rhodes</td>
<td>Director</td>
<td>Present</td>
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<tr>
<td>27</td>
<td>South Pasadena</td>
<td>Diana Mahmud</td>
<td>Alternate</td>
<td>Present</td>
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<tr>
<td>28</td>
<td>Temple City</td>
<td></td>
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<tr>
<td>29</td>
<td>Thousand Oaks</td>
<td>David Newman</td>
<td>Director</td>
<td>Remote</td>
</tr>
<tr>
<td>30</td>
<td>City of Ventura</td>
<td>Liz Campos</td>
<td>Director</td>
<td>Remote</td>
</tr>
<tr>
<td>31</td>
<td>Ventura County</td>
<td>Vianey Lopez</td>
<td>Vice Chair</td>
<td>Remote</td>
</tr>
<tr>
<td>32</td>
<td>West Hollywood</td>
<td>John Erickson</td>
<td>Director</td>
<td>Present</td>
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<tr>
<td></td>
<td></td>
<td>Chelsea L. Byers</td>
<td>Alternate</td>
<td>Present</td>
</tr>
<tr>
<td>33</td>
<td>Westlake Village</td>
<td></td>
<td></td>
<td>Absent</td>
</tr>
<tr>
<td>34</td>
<td>Whittier</td>
<td>Leon Vasquez</td>
<td>Alternate</td>
<td>Remote</td>
</tr>
</tbody>
</table>

All votes are unanimous unless otherwise stated.

**GENERAL PUBLIC COMMENT**

There was no public comment.
**CONSENT AGENDA**

1. Approve Minutes from May 6, 2023, Board of Directors Meeting
2. Receive and File CY Q1 Risk Management Team Report
3. Receive and File CY Q1 Quarterly Communications Report
4. Receive and File FY Q3 Quarterly Financial Results
5. Receive and File Bill Positions Monthly Report
6. Receive and File Community Advisory Committee Monthly Report

**Motion:** Director Calaycay, Claremont  
**Second:** Director Mahmud, South Pasadena  
**Vote:** The consent agenda was approved by a roll call vote.

**REGULAR AGENDA**

7. Adopt Resolution No. 23-06-048 to Approve New Rates for Phase 1 & 2 Non-Residential Customers, Resolution No. 23-06-049 to Approve New Rates for Phase 3 & 5 Non-Residential Customers, Resolution No. 23-06-050 to Approve New Rates for Phase 4 & 5 Residential Customers, and Resolution No. 23-06-051 to Approve New Rates for All Phase 6 Customers

Ted Bardacke, CEO, provided a presentation on the item, including an update related to Southern California Edison’s (SCE) implementation of an upcoming rate increase which will improve CPA’s competitiveness. Starting in July 2023, CPA’s residential rates are targeted to be 4.8% less expensive for Lean, 3.9% less expensive for Clean, and close to parity for 100% Green.

Director Rhodes asked if staff considered changing CPA’s rates in light of SCE’s rate increase; Mr. Bardacke explained that CPA is deliberative in its rate setting process and aims to adjust rates just once a year and not react to every SCE rate change. The midpoint reserve level rates provide a buffer in the event that SCE’s rates go down or the Power Charge Indifference Adjustment (PCIA) goes up in early 2024. Director Mahmud commented that in the past, adjusting rates pursuant to SCE’s adjustments did not prove valuable for CPA.

**Motion:** Director Monteiro, Hawthorne  
**Second:** Director Calaycay, Claremont  
**Vote:** Item 7 was approved by a roll call vote.

8. Approve Fiscal Year 2023/2024 Budget as Recommended by the Finance Committee

David McNeil, Chief Financial Officer, provided a presentation on the proposed FY 2023/24 budget. The proposed budgeted revenues reflect the Board-approved rate approach, default product changes in 2022 and 2023, and new community enrollments in 2024. Staff budgeted the bad debt expense at 1.77% of revenue or $28.3 million, up from 1.25% of revenue included in the FY 2022/23 budget. The cost of energy reflects increased costs of system energy, Resource Adequacy (RA), and renewable energy, along with a contingency equal to 7% of the cost of energy. Staff budgeted operating expenses to increase by $10.6 million or 23%; operating expenses reflect investments in staff and customer programs. CPA’s metrics for operating expenses and staffing costs compare favorably with industry averages. CPA projects a $283.3 million increase to the net position in FY 2023/24.
The budget increase in the net position would bring CPA’s reserves to 40% by the end of June 2024, the mid-point of the target range in CPA’s Reserve Policy.

Director Santangelo commented that the Finance Committee reviewed the proposed budget and recommends its approval. In response to Director Crosswhite’s question about the FY 2022/23 energy cost contingency, Mr. McNeil confirmed there was none. Director Torres asked if CPA’s liquidity included the proposed increase in the line of credit, and Mr. McNeil confirmed that CPA’s liquidity includes the combination of cash and the available line of credit. Director Hicks inquired about increases in transmission line usage and/or costs. Mr. Bardacke stated that SCE’s rate increase will result in a $5 per month increase in delivery rates. Director Rhodes asked about intent to reduce dependence on credit for maintaining the Days Liquidity on Hand (DLOH). Mr. McNeil explained that cash accumulation is reliant on higher rates; therefore, CPA’s strategy is to create a balance between both, but may reduce dependence on credit in the future to decrease the costs associated with lines of credit. Acting Chair Horvath commented that the Los Angeles County auditing agency praised CPA’s budget transparency. Mr. Bardacke thanked the Finance Committee for their diligent work on the proposed budget.

Motion: Director Mahmud, South Pasadena
Second: Director Calaycay, Claremont
Vote: Item 8 was approved by a roll call vote.

9. Adopt Resolution No. 23-06-052 Authorizing and Approving Entry into An Amendment to a Revolving Credit Agreement (“Credit Agreement”) with JPMorgan Chase Bank, N.A. (“JPM”), and Delegating Authority to CPA Authorized Representatives to Execute and Deliver Such Amendment and Other Documents Related Thereto

David McNeil provided a presentation on the proposed amendment to the credit agreement with JP Morgan. The proposed amendment aims to increase the facility’s size to $160 million, extend the maturity date to March 31, 2024, improve certain credit terms, provide CPA with increased liquidity amidst rising energy market risks, increase CPA’s DLOH by approximately 27 days, and ensure the availability of the credit facility when needed. Mr. McNeil outlined the rationale behind staff’s recommendation for the proposed agreement. The Finance Committee supports the proposed amendment.

Director Rhodes inquired about future credit agreement renegotiations; staff anticipates that CPA will demonstrate improved credit strength through positive financial year end results, which would give CPA more leverage in future negotiations. Director Crosswhite asked about CPA’s use of the line of credit and the impact of an increase on credit rating. Mr. McNeil explained that CPA used the line of credit in September 2022 and January 2023 due to the heat wave and energy cost spike, respectively. The line of credit assists CPA in managing the time gap between paying energy suppliers and receiving customer payments. Lastly, a higher DLOH enhances the perception of an organization’s creditworthiness.

Motion: Director Monteiro, Hawthorne
Second: Director Mahmud, South Pasadena
Vote: Item 9 was approved by a roll call vote.

10. Receive Presentation on Net Energy Metering 3.0 and Provide Feedback

Karen Schmidt, Director, Rates and Strategy, provided a presentation on the options for the Net Energy Metering (NEM) 3.0 policy. Ms. Schmidt provided an overview of the NEM structure and goals. The NEM 3.0 decision by the California Public Utilities Commission’s (CPUC’s) resulted in reduced overall compensation for new solar customers, better economic payback for battery storage, and additional compensation for low-income customers. While the approach partially aligns with CPA’s policy goals, it may not sufficiently address the barriers to storage adoption and increased solar access for low-income customers. Until the Board adopts a new NEM 3.0 policy, CPA will enroll new NEM customers under the existing NEM 2.0 tariff. Ms. Schmidt provided comparisons between NEM 2.0 and NEM 3.0 in terms of customer value, support for CPA policy goals, and projected annual costs. CPA could include a rate adder to encourage storage adoption and further compensate low-income customers. However, the long-term cost of a rate adder is uncertain, and customer programs and other incentives may have a greater impact on storage adoption. Staff recommends setting CPA’s export compensation rate based on the Avoided Cost Calculator (ACC) values specified in the CPUC’s NEM 3.0 decision, along with a broad-based storage rebate program that includes additional incentives for low-income customers. Staff also suggest collaborating with member agencies and the Community Advisory Committee (CAC) to issue targeted Requests for Proposals (RFPs) in FY 2023/24 to increase solar and storage adoption among hard-to-reach customers.

Director Crosswhite inquired about the NEM onboarding process for new communities enrolling in 2024. Ms. Schmidt clarified that a customer is considered new, under the NEM policy, if they installed a solar energy system after April 15, 2023. Existing solar customers in the three new cities will be placed on CPA’s NEM tariff, while new customers will be enrolled under NEM 3.0 program and the appropriate Board-approved tariff. In response to Director Monteiro’s question about solar energy applications submitted prior to April 15, staff confirmed that completed applications received before April 15 will remain on NEM 2.0. Director Rhodes inquired about the customer benefits of adopting solar and storage energy. Staff explained that customers with solar and storage reduce demand when it’s high and are compensated for using their electricity; adding storage to the approximately 66,000 NEM customers, accounting for 6-7% of the customer base, would provide a competitive advantage for CPA. Director Newman asked about costs between NEM 2.0 and 3.0 and storage incentives for low-income customers. Staff outlined various barriers to low-income solar adoption, including upfront installation costs and renter restrictions. Keeping customers on NEM 2.0 would be two to three times more expensive for CPA. Director Mallory expressed support for programs tailored to meet the needs of low-income and renting customers, as well as energy incentives that improve living standards and reduce residential costs. Director Campos asked for clarification on the definition of “hard-to-reach customers.” Mr. Bardacke explained that it encompasses customers facing barriers in adopting energy efficiency measures and installing rooftop solar and storage due to factors such as language, low-income, property owner restrictions, and multifamily living. Director Mahmud commented that the Energy Committee supports staff’s recommendation but acknowledged a challenge in reaching low-income customers and encouraged staff to expand the program accordingly.
Director Mahmud suggested that the storage incentive include some requirements for exporting stored energy to the grid rather than solely for offsetting customer consumption and that the value of the entire program does not exceed the avoided cost. Acting Chair Horvath inquired about any potential credit for RA from adding solar + storage. Mr. Langer indicated that CPA could claim RA credits on both the supply and demand sides, when a customer reduces peak usage using battery storage or when they participate in demand response programs. Acting Chair Horvath emphasized the need for community solar and direct installation programs to help address the cost burden in multifamily housing and for low-income customers. Director Erickson highlighted the importance of engaging with housing groups to bridge the gap with hard-to-reach customers.

**MANAGEMENT REPORT**
Mr. Bardacke noted that staff is actively monitoring 92 newly introduced energy bills. Regarding AB 1373, CPA has moved from an opposition to neutral stance. This bill aims to modify the state’s energy procurement process, oversight of Community Choice Aggregators (CCAs), and penalties for non-compliance by Load Serving Entities (LSEs). Mr. Bardacke added that AB 1373 has undergone significant amendments but will necessitate future action.

**COMMITTEE CHAIR UPDATES**
Director Deborah Klein Lopez, Chair, Legislative & Regulatory Committee, indicated that Assembly Bill 538, which involves electricity grid regionalization, and two other bills proposing changes to the California Environmental Quality Act (CEQA) will be presented to the Board at a future date. In response to Director Erickson’s concern about time constraints for bill positions discussed at the committee level, Director Klein Lopez suggested prioritizing time-sensitive bills at the beginning of Legislative & Regulatory Committee agendas.

Director Susan Santangelo, Chair, Finance Committee, shared that the proposed FY 2023/24 budget and the credit agreement amendment were reviewed by the Committee.

Director Jeff Maloney, speaking on behalf of Chair Parkhurst, Energy Planning & Resources Committee, reported that the committee discussed Power Supply, Net Energy Metering, upcoming RFOs, and potential tolling agreements.

**BOARD MEMBER COMMENTS**
None.

**REPORT FROM THE CHAIR**
None.

**ADJOURN**
Acting Chair Horvath adjourned the meeting at 3:54 p.m.
Staff Report – Agenda Item 2

To: Board of Directors
From: Geoff Ihle, Director of Energy Market Risk Management
Approved By: Ted Bardacke, Chief Executive Officer
David McNeil, Chief Financial Officer
Subject: Energy Risk Management Policy (ERMP) Amendments
Date: July 6, 2023

RECOMMENDATION
Adopt Resolution No. 23-07-053 (Attachment 1) to approve proposed ERMP amendments (Attachment 2).

The Energy Resources and Planning Committee (“Energy Committee”) recommended approval of the proposed amendments at its June 28, 2023 meeting.

BACKGROUND
The ERMP governs the framework by which the Board, staff, and consultants conduct power procurement and related business activities for CPA. Nearly all Load Serving Entities have a similar governing document. CPA’s ERMP is based on industry best practices and includes a description of the major risks CPA faces and measures to mitigate those risks, acceptable business practices and authorized transaction types, segregation of duties and delegations of authority, counterparty credit risk management procedures, and CPA’s Energy Risk Hedging Strategy, which sets the minimum and maximum energy product volumes CPA will procure to meet its mission, risk management objectives, and regulatory requirements.

An overarching goal of the ERMP and associated hedging strategy is to prudently manage CPA’s power supply costs so that it can offer stable and competitive customer rates within a dynamic commodity market. As such, the ERMP evolves as CPA develops
further operational experience, its energy portfolio grows, additional risks emerge, and/or new market and regulatory conditions unfold.

The ERMP establishes a staff-level Risk Management Team\(^1\) (RMT). Pursuant to Section 8 of the ERMP, the Chief Executive Officer (CEO) in consultation with the RMT is required to review the ERMP and associated procedures on an annual basis to determine if they should be amended, supplemented, or updated to account for changing business conditions, regulatory requirements or to make other administrative revisions.\(^2\) If ERMP amendments are warranted, they are reviewed by the Energy Committee and submitted to the Board for approval.

Following extensive research by staff and consultation with the Board, the ERMP was adopted by the Board in July 2018. The Board subsequently approved amendments to the ERMP in July of 2019, 2020, 2021, and 2022 pursuant to the process described in Section 8.

This year’s proposed amendments to the ERMP appear as a redline to the current ERMP and are described herein. The Executive Committee received an overview of areas of the ERMP to be amended at its June 21, 2023 meeting. The Energy Committee reviewed and discussed a presentation summarizing the amendments to ERMP at its June 28, 2023 meeting. The proposed amendments reflect the recommendations of staff and incorporate refinements suggested by the Energy Committee to identify staff positions that compose the RMT.

**SUMMARY OF PROPOSED ERMP AMENDMENTS**

Proposed amendments to the ERMP include the following:

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\(^1\) The RMT is currently comprised of the CEO, CFO, COO, and Vice President, Power Supply. It meets at least weekly.


1. **Amendments to the Composition of RMT**

a. **Summary of proposed amendments**

The proposed amendment to section 4.2 of the ERMP identifies the membership of the RMT as the Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, and the Vice President, Power Supply. Currently only the CEO is identified as a required RMT member. Further, the amendment clarifies that in the event of any vacancy, the RMT may (i) appoint interim RMT member(s), or (ii) operate the RMT with the remaining RMT member(s), until such time as the Vacancy is filled or the reason for the Vacancy no longer exists.

b. **Discussion**

The amendment makes clear that the RMT is comprised of four senior executives of CPA. This amendment reflects current practice and is appropriate to establish clear lines of accountability given the proposed amendments to the transaction execution authorities described in the next section. The amendment also clarifies the options that are available to ensure normal operation of the RMT in the case of a vacancy.

### 4.2 Risk Management Team

The RMT is responsible for implementing, maintaining and overseeing compliance with the ERMP and for maintaining the Energy Risk Hedging Strategy. At a minimum, the members of the RMT shall consist of include the Chief Executive Officer, and at least two additional CPA staff members with experience in energy markets selected at the sole discretion of the Chief Executive Officer, the Chief Operating Officer, the Chief Financial Officer, and the Vice President of Power Supply. In the event of any Vacancy, the RMT may (i) appoint interim RMT member(s) or (ii) operate the RMT with the remaining RMT member(s), until such time as the Vacancy is filled or the reason for the Vacancy no longer exists.
2. **Amendments to Transaction Execution Authority**
   a. **Summary of proposed amendments**

<table>
<thead>
<tr>
<th>Position</th>
<th>Transaction Type</th>
<th>Term Limit</th>
<th>Maturity Limit</th>
<th>Counterparty Limit</th>
<th>National Value Limit (per transaction)</th>
<th>National Value Limit (annual)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Executive Officer in consultation with the RMT</td>
<td>Tolling Agreements</td>
<td>3 years 5 years</td>
<td>3 years</td>
<td>Pursuant to Credit Policy in Section 6 of this Policy</td>
<td>Within hedge Board-approved limits set approved in the Energy Risk Hedging Strategy in Appendix B of this Policy</td>
<td></td>
</tr>
<tr>
<td>New Build</td>
<td>5 years</td>
<td>7 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Any transactions other than Tolling Agreements or New Build</td>
<td>10 years 5 years</td>
<td>10 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chief Executive Officer</td>
<td>Transactions</td>
<td>$10m</td>
<td>$80m</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The proposed amendments to transaction execution authority create unique delegations based on Transaction Types (Tolling Agreements\(^3\), New Build\(^4\), and Any Transaction other than Tolling Agreements or New Build, i.e., existing facilities that provide renewable energy, carbon-free energy, energy storage, and/or Resource Adequacy). Currently, all transaction types receive the same treatment in this section even though they present different risks to CPA. Additionally, the proposed amendments create new Maturity Limits, defined as the maximum period between the date of contract execution and the date of final product delivery. The current five-year Term Limit (defined as the maximum time period of product deliveries specified in a contract) is reduced to three years for Tolling Agreements, remains the same for New Build, and is increased to 10 years for Any Transactions other than Tolling Agreements and New Build. Further, sole CEO authority is removed. Finally, monthly Board reporting is added for any Tolling Agreement and for any transaction with a term greater than five years executed under the proposed delegation of execution authorities. In sum, of these four changes, three further limit the transaction execution authority of the CEO/RMT and one expands that authority.

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\(^3\) Tolling Agreements are agreements between a power buyer and a power generator, under which the buyer supplies the fuel, either physically or financially, and receives an amount of power generated based on an assumed conversion rate at an agreed cost. They are typically used for generation facilities powered by natural gas and excludes battery storage.

\(^4\) New Build transactions involve the development and construction of a new generating or storage facility or an expansion, upgrade, or redevelopment of an existing facility where incremental capacity is offered.
b. Discussion
New Maturity Limits are intended to circumscribe the delegation of authority to better control risk; without Maturity Limits, contractual obligations that have a short delivery period but occur far into the future could be incurred. The proposed decrease of the current 5-year Term Limit for Tolling Agreements to 3 years reflects the fact that Tolling Agreements are a new area of opportunity for CPA and a more restrictive delegation is appropriate. The proposed increase of the current 5-year Term Limit to 10 years for any transaction other than Tolling Agreements or New Build is a response to tight energy markets with enhanced competition for existing resources and is intended to enable CPA to compete for those resources, thus reducing costs and increasing the likelihood of meeting Resource Adequacy requirements and avoiding financial and other penalties associated with non-compliance. Reduced costs are expected to translate into lower customer rates established through the Board’s annual rate-setting process. Transactions greater than 5 years and any Tolling Agreements will be reported to the Board monthly, providing enhanced transparency. The CEO’s solo approval authority has never been used and is not needed and therefore is removed.

3. Amendments to Minimum and Maximum Fixed Price Energy Hedge Targets:
   a. Summary of proposed amendments
The proposed amendments to Minimum and Maximum Fixed Price Energy Hedge Target percents (herein Energy Hedge Target Ranges or Target Ranges) replace annual Energy Hedge Target Ranges with quarterly Target Ranges and establish Target Ranges for the prompt quarter + 10 - 39, defined as the calendar quarter following the current calendar quarter plus 10 to 39 quarters (i.e., 2.5-10 years in the future).

Current Hedge percentages:

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Minimum Hedge %</th>
<th>Maximum Hedge %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prompt 1-4 Quarters</td>
<td>85</td>
<td>110</td>
</tr>
<tr>
<td>Balance of prompt year not covered by Prompt 4 Quarters</td>
<td>65</td>
<td>90</td>
</tr>
<tr>
<td>Current Calendar Year (CY) + 2</td>
<td>40</td>
<td>80</td>
</tr>
<tr>
<td>CY + 3</td>
<td>30</td>
<td>70</td>
</tr>
<tr>
<td>CY + 4</td>
<td>30</td>
<td>70</td>
</tr>
<tr>
<td>CY + 5</td>
<td>30</td>
<td>70</td>
</tr>
</tbody>
</table>
Proposed Hedge percentages:

<table>
<thead>
<tr>
<th>Quarter</th>
<th>Minimum Hedge %</th>
<th>Maximum Hedge %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prompt Q (PQ)</td>
<td>85%</td>
<td>110%</td>
</tr>
<tr>
<td>PQ + 1</td>
<td>80%</td>
<td>110%</td>
</tr>
<tr>
<td>PQ + 2</td>
<td>74%</td>
<td>110%</td>
</tr>
<tr>
<td>PQ + 3</td>
<td>69%</td>
<td>110%</td>
</tr>
<tr>
<td>PQ + 4</td>
<td>63%</td>
<td>105%</td>
</tr>
<tr>
<td>PQ + 5</td>
<td>58%</td>
<td>99%</td>
</tr>
<tr>
<td>PQ + 6</td>
<td>52%</td>
<td>93%</td>
</tr>
<tr>
<td>PQ + 7</td>
<td>47%</td>
<td>87%</td>
</tr>
<tr>
<td>PQ + 8</td>
<td>41%</td>
<td>82%</td>
</tr>
<tr>
<td>PQ + 9</td>
<td>36%</td>
<td>76%</td>
</tr>
<tr>
<td>PQ + 10 - 39</td>
<td>30%</td>
<td>70%</td>
</tr>
</tbody>
</table>

b. Discussion
The replacement of annual Energy Hedge Target Ranges (illustrated by dotted purple and orange lines in the chart below) with quarterly Energy Hedge Target Ranges (illustrated by solid green and yellow lines in the chart below) are intended to smooth the volumes of periodic energy purchases to better implement CPA’s steady, ratable, and time-driven purchasing strategy described in the ERMP and to remain in compliance with this Policy.

The extension of Energy Hedge Target Ranges to 39 Quarters is intended to create risk control limits that align with the proposed Term and Maturity Limits described above in section entitled Amendments to Transaction Execution Authority.
4. **Amendments to Renewable Energy Minimum and Maximum Hedge Targets:**

   a. **Summary of proposed amendments**

Minimum and Maximum Renewable Energy Hedge Target percents (herein Renewable Energy Hedge Target Ranges) are proposed for the current calendar year. The Maximum Hedge Target percent is proposed to increase from 100% of forecast requirements to 110% of forecast requirements for the prompt calendar year. And increases to both the Minimum and Maximum Renewable Energy Hedge Target percentages are proposed in all years. Target Ranges for the prompt year (PY) + 5 – 9, defined as the calendar year following the current calendar year plus 5 to 9 years are also proposed.

<table>
<thead>
<tr>
<th>Time Period</th>
<th>CURRENT Min Hedge %</th>
<th>CURRENT Max Hedge %</th>
<th>PROPOSED Min Hedge %</th>
<th>PROPOSED Max Hedge %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Calendar Year</td>
<td></td>
<td></td>
<td>90</td>
<td>110*</td>
</tr>
<tr>
<td>Prompt Calendar Year</td>
<td>65</td>
<td>100</td>
<td>80</td>
<td>110*</td>
</tr>
<tr>
<td>PY + 1</td>
<td>45</td>
<td>95</td>
<td>50</td>
<td>105</td>
</tr>
<tr>
<td>PY + 2</td>
<td>30</td>
<td>90</td>
<td>50</td>
<td>100</td>
</tr>
<tr>
<td>PY + 3</td>
<td>30</td>
<td>85</td>
<td>50</td>
<td>95</td>
</tr>
<tr>
<td>PY + 4</td>
<td>30</td>
<td>80</td>
<td>50</td>
<td>95</td>
</tr>
<tr>
<td>PY + 5 - 9</td>
<td></td>
<td></td>
<td>50</td>
<td>95</td>
</tr>
</tbody>
</table>

   b. **Discussion**

The addition of Renewable Energy Hedge Targets in the “Current Calendar Year” is proposed to improve risk control for the current calendar year where no limits currently exist. Maximum Hedge percents are proposed to increase to 110% in the Prompt Calendar Year\(^5\) (PY) and PY + 1 to better manage portfolio “buffers” that address load and generation variability inherent to most renewable energy sources. Maximum Hedge percent increases are proposed for PY + 2-4 to allow CPA to execute low-cost purchases in later years, generally from Existing Facilities. Minimum Hedge Target percent increases are proposed because current renewable energy volumes under contract significantly exceed the Minimum Hedge Target percents and will grow over time as more of CPA’s New Build projects come on-line. The addition of Renewable Energy Hedge Target Ranges for PY + 5-9 is intended to create risk control limits that align with the proposed Term and Maturity Limits described above in section entitled Amendments to Transaction Execution Authority.

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\(^5\) Prompt Calendar Year is the calendar year following the current calendar year.
5. **Amendments to Carbon Free Minimum and Maximum Hedge Targets:**

   a. **Summary of proposed amendments**

   Increases to the Maximum Carbon Free Hedge Target percent are proposed in all years. Minimum and Maximum Carbon Free Target percents are added for the current calendar year. Target Ranges for the prompt year (PY) + 5 – 9, defined as the calendar year following the current calendar year plus 5 to 9 years are also proposed.

<table>
<thead>
<tr>
<th>Time Period</th>
<th>CURRENT Min Hedge %</th>
<th>CURRENT Max Hedge %</th>
<th>PROPOSED Min Hedge %</th>
<th>PROPOSED Max Hedge %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Calendar Year</td>
<td></td>
<td>85</td>
<td></td>
<td>110*</td>
</tr>
<tr>
<td>Prompt Calendar Year</td>
<td>75</td>
<td>100</td>
<td>75</td>
<td>110*</td>
</tr>
<tr>
<td>PY + 1</td>
<td>50</td>
<td>100</td>
<td>50</td>
<td>110</td>
</tr>
<tr>
<td>PY + 2</td>
<td>25</td>
<td>75</td>
<td>25</td>
<td>100</td>
</tr>
<tr>
<td>PY + 3</td>
<td>0</td>
<td>50</td>
<td>0</td>
<td>75</td>
</tr>
<tr>
<td>PY + 4</td>
<td>0</td>
<td>50</td>
<td>0</td>
<td>75</td>
</tr>
<tr>
<td>PY + 5 - 9</td>
<td>0</td>
<td></td>
<td>75</td>
<td></td>
</tr>
</tbody>
</table>

   b. **Discussion**

   The addition of Carbon Free Energy Hedge Targets in the “Current Calendar Year” is proposed to improve risk control for the current calendar year where no limits currently exist. Maximum Hedge percent increases to 110% are proposed in the Prompt Calendar Year and PY + 1 to better manage portfolio “buffers” to address load and generation variability, particularly for the hydro resources that make up CPA’s non-renewable carbon-free energy purchases. Maximum Hedge Target percent increases in PY + 2-4 are proposed to allow CPA to execute lower-cost purchases in later years. The addition of Energy Hedge Target Ranges for PY + 5-9 is intended to create risk control limits that align with the proposed Term and Maturity Limits described above in section entitled Amendments to Transaction Execution Authority.

6. **Amendments to RA Minimum Hedge Targets:**

<table>
<thead>
<tr>
<th>Time Period</th>
<th>CURRENT Min Hedge %</th>
<th>CURRENT Max Hedge %</th>
<th>PROPOSED Min Hedge %</th>
<th>PROPOSED Max Hedge %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prompt Calendar Year</td>
<td></td>
<td>90</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>PY + 1</td>
<td>50</td>
<td>95</td>
<td>50</td>
<td>95</td>
</tr>
<tr>
<td>PY + 2</td>
<td>30</td>
<td>90</td>
<td>35</td>
<td>90</td>
</tr>
<tr>
<td>PY + 3</td>
<td>20</td>
<td>80</td>
<td>35</td>
<td>80</td>
</tr>
<tr>
<td>PY + 4</td>
<td>20</td>
<td>80</td>
<td>35</td>
<td>80</td>
</tr>
<tr>
<td>PY + 5 - 9</td>
<td>35</td>
<td></td>
<td>35</td>
<td></td>
</tr>
</tbody>
</table>
a. **Summary of proposed amendments**

The proposed amendment to RA Hedge Targets Ranges would increase the Minimum RA Hedge Target percents and add Target Ranges for the prompt year (PY) + 5 – 9 years.

b. **Discussion**

Minimum RA Hedge Target percents are proposed to be increased in PY 2-4 because current Minimum Targets percents are significantly below RA volumes already under contract. The addition of RA Hedge Target Ranges for PY + 5-9 is intended to create risk control limits that align with the proposed Term and Maturity Limits described above in section 1, entitled Amendments to Transaction Execution Authority.

7. **Amendments to compliance measurement timing**

a. **Summary of proposed amendments**

The proposed amendments replace a fixed day with a five-day window in which to make measurements for compliance with the hedge target ranges described in the previous sections. The following proposed amendment to the Carbon-Free Hedge Target measurement requirement illustrates this change:

| CPA will observe the following schedule when hedging its Carbon-Free renewable energy requirements. |
| This hedge schedule shall be measured within 5 days prior to the first day of each quarter for the Current Calendar Year, and within 5 days prior to December 1 of each year for the following ten Calendar Years. |
| The hedge schedule shall be measured on December 1 of each year for the Prompt Calendar year and the two subsequent calendar years. |

b. **Discussion**

A fixed compliance measurement date can result in a compliance measure day falling on a weekend or holiday which creates additional and unnecessary operational challenges. A five-day window will improve operational efficiency by allowing compliance measurement on a regular business day.

8. **Other Changes**

Several minor revisions and clarifications are made throughout the document that reflect CPA’s operational history related to procurement activities. Several definitions have also been added to improve clarity.
**ERMP Acknowledgements**

The ERMP requires CPA representatives, including the Board, participating in any activity or transaction within the scope of the ERMP to sign, on an annual basis or upon any revision, an acknowledgment of their responsibilities, duties, obligations, and compliance under the ERMP. In tandem with the amendment to the ERMP, staff will be asking the Board to complete their annual acknowledgment forms in July, which will be emailed to the Directors in a subsequent communication from the Clerk of the Board.

**ATTACHMENTS**

1. Resolution No. 23-07-053
2. Proposed ERMP Amendments (redline)
RESOLUTION NO. 23-07-053

RESOLUTION OF THE BOARD OF DIRECTORS OF CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA ADOPTING AND APPROVING THE AMENDED ENERGY RISK MANAGEMENT POLICY

THE BOARD OF DIRECTORS OF CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, Clean Power Alliance of Southern California (formerly known as Los Angeles Community Choice Energy Authority) (“Clean Power Alliance” or “CPA”) was formed on June 27, 2017;

WHEREAS, on April 5, 2018, the CPA Board of Directors (“Board”) adopted Resolution 18-005 delegating authority to the Executive Director for certain activities related to power procurement;

WHEREAS, on July 12, 2018, the Board adopted Resolution 18-006 approving the Energy Risk Management Policy (“ERMP”) which establishes a framework by which the Board, staff, and consultants conduct power procurement and related business activities that may impact the risk profile of CPA;

WHEREAS, the ERMP specifies that CPA will review the policy on an annual basis in order to determine if the ERMP should be amended, supplemented, or updated to account for changing business conditions and/or regulatory requirements;

WHEREAS, since July 12, 2018, the Board has approved amendments to the ERMP on an annual basis to account for changing business or regulatory conditions as well as administrative adjustments; and,

WHEREAS, CPA has considered the prevailing business conditions and regulatory environment and determined that refinements or updates to certain functions or activities are necessary or beneficial.

NOW, THEREFORE, BE IT DETERMINED, AFFIRMED, AND ORDERED BY THE BOARD OF DIRECTORS OF THE CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA that the attached ERMP, presented as Exhibit A, as amended therein, is hereby approved as of July 6, 2023;

IT IS FURTHER DETERMINED, AFFIRMED, AND ORDERED, any power procurement activity that falls outside the parameters of the ERMP, as amended herein, shall be brought to the Board for consideration;

IT IS FURTHER DETERMINED, AFFIRMED, AND ORDERED that any and all acts authorized pursuant to this Resolution and performed prior to the passage of this Resolution are hereby ratified and approved;
IT IS FURTHER DETERMINED, AFFIRMED, AND ORDERED that this Resolution shall be continuing and remain in full force and effect; and,

IT IS FURTHER DETERMINED, AFFIRMED, AND ORDERED that the approval of the ERMP is not a “project” under Section 21065 of the Public Resources Code and under California Environmental Quality Act (“CEQA”) Guidelines Sections 15378(a) and is exempt under CEQA Guidelines Section 15061(b)(3).

ADOPTED AND APPROVED this 6th day of July 2023.

____________________________
Julian Gold, Chair

ATTEST:

_________________________
Gabriela Monzon, Secretary
EXHIBIT A

ENERGY RISK MANAGEMENT POLICY

(see attached)
Energy Risk Management Policy

July 6, 2023
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Section 1: ENERGY RISK MANAGEMENT POLICY OVERVIEW

1.1 Background and Purpose

The Clean Power Alliance of Southern California (CPA) is a Joint Powers Authority (JPA) administering a Community Choice Aggregation (CCA) program in Southern California. CPA service territory currently includes 32 jurisdictions – 30 cities and the unincorporated parts of Los Angeles and Ventura Counties. CPA members presently include the following:

**Counties:**
- Los Angeles
- Ventura

**Cities:**

- Agoura Hills
- Alhambra
- Arcadia
- Beverly Hills
- Calabasas
- Camarillo
- Carson
- Claremont
- Culver City
- Downey
- Hawaiian Gardens
- Hawthorne
- Manhattan Beach
- Malibu
- Moorpark
- Ojai
- Oxnard
- Paramount
- Redondo Beach
- Rolling Hills Estates
- Santa Monica
- Sierra Madre
- Simi Valley
- South Pasadena
- Temple City
- Thousand Oaks
- Ventura
- West Hollywood
- Westlake Village
- Whittier

**CPA service will expand to three additional communities – Hermosa Beach, Monrovia, and Santa Paula – in March 2024.**

CCA, authorized in California under AB 117 and SB 790, allows local governments, including counties and cities, to purchase wholesale power supplies for resale to their residents and businesses as an alternative to electricity provided by an Investor Owned Utility (IOU). For CPA members, that IOU is Southern California Edison (SCE). Electricity procured by CPA to serve customers is delivered over SCE’s transmission and distribution system.

CPA exists to serve its local government members, and the residences and businesses located within their respective communities. CPA’s specific objectives are to provide its customers with a reliable supply of electricity, at competitive electric rates, sourced from a generation portfolio with lower greenhouse gas (GHG) emissions and higher renewable content than the incumbent utility, SCE. CPA also has goals to be a catalyst for local economic development and give its member agencies greater choice in the energy procured for their residents.
To meet these commitments, CPA must procure electric power supplies and operate in the wholesale energy market which exposes CPA, and ultimately the customers that it serves, to various risks. The intent of the Energy Risk Management Policy (ERMP) is to provide CPA, and by extension its customers, with a framework to identify, monitor and manage risks associated with procuring power supplies and operating in wholesale energy markets.

The Energy Risk Management Policy (ERMP), including its appendices, establishes CPA’s Energy Risk Program.

### 1.2 Scope

Unless otherwise explicitly stated in the ERMP or other policies approved by the CPA Board of Directors (Board), the ERMP applies to all power procurement and related business activities that may impact the risk profile of CPA. The ERMP documents the framework by which CPA staff and consultants will:

- Identify and quantify risk
- Develop and execute procurement strategies
- Develop controls and oversight
- Monitor, measure and report on the effectiveness of the ERMP

To ensure its successful operation, CPA has partnered with experienced consultants to provide power supply services. Specific to power procurement, CPA has partnered with a third-party Scheduling Coordinator that augments CPA’s internal Front (scheduling), Middle (monitoring) and Back (settlement) Office related activities as discussed at Section 4.3. The Scheduling Coordinator supporting CPA’s power procurement activities will adhere to and be governed by the ERMP in providing these services to CPA. In addition, the Scheduling Coordinator’s activities executed on CPA’s behalf will be governed by its own risk management policies and procedures, and prudent industry practices.

### 1.3 Energy Risk Management Objective

The objective of the ERMP is to provide a framework for conducting procurement activities that maximize the probability of CPA meeting the goals listed in Section 2.1.

Pursuant to the ERMP, CPA will identify and measure the magnitude of the risks to which it is exposed and that contribute to the potential for not meeting identified goals.

### 1.4 ERMP Administration

The ERMP has been reviewed and approved by the Board. The Chief Executive Officer in consultation with the Risk Management Team (collectively, the “RMT”), as defined in Section 4.2, and the Board must approve amendments to the ERMP, except for appendices D, E, and F, which may be amended with approval of the Chief Executive Officer, in consultation with the RMT. The Chief Executive Officer must give notice to the Board of any amendment it makes to an appendix or a reference policy or procedure document.
Section 2: GOALS AND RISK EXPOSURES

2.1 ERMP Goals
To help ensure its long-term success, CPA has outlined the following goals:

- Build a portfolio of resources with lower GHG emissions and higher renewable content than SCE;
- Meet reliability requirements established by the State of California, and operate in a manner consistent with Prudent Utility Practice (defined as the practices generally accepted in the utility industry to ensure safe, reliable, compliant and expeditious operations);
- Maintain competitive retail rates with SCE after adjusting for exit fees (currently the Power Charge Indifference Adjustment or PCIA) and Franchise Fees paid by CPA customers;
- Emphasize during the initial years of operation the funding of financial reserves to meet the following long-term business objectives:
  - Stabilize rates by dampening year-to-year variability in power supply costs;
  - Establish an investment-grade credit rating to maximize the ability of CPA to engage in long-term acquisition or development of generation supplies consistent with ERMP goals; and
  - Provide a source of equity capital for investment in generation.

The goals outlined above are incorporated into the financial models and metrics that are used to monitor and measure risk and ERMP success. It is important to note that the goals listed above are not intended to be a comprehensive list of goals for CPA. Rather, the above reflect the overarching goals critical to CPA’s long-term financial success and that will guide the ERMP.

2.2 Risk Exposures
For the purpose of the ERMP, risk exposure is assessed on all transactions (energy, environmental attributes, and capacity) as well as the risk exposure of open positions and the impacts of these uncertainties on CPA’s load obligations.

CPA faces a range of risks during launch and ongoing operation including:

- Customer opt-out risk
- Market risk
- Regulatory risk
- Volumetric risk
- Model risk
- Operational risk
- Counterparty credit risk
- Reputation risk
2.2.1 Customer Opt-Out Risk

Customer opt-out risk may be realized by any condition or event that creates uncertainty within, or a diminution of, CPA’s customer base. Customer opt-out risk is manifested in two separate ways.

First, the ability of customers to return to bundled service from SCE creates uncertainty in CPA’s revenue stream, which is critical for funding ERMP goals and achieving the investment grade credit rating needed to successfully operate over the long-term.

Second, customer opt-out risk can potentially challenge the ability of CPA to prudently plan for, and cost-effectively implement, long-term resource commitments made on behalf of its member communities and the customers it serves.

CPA will manage customer opt-out risk through the following means:

- Implement a key accounts program and maintain strong relationships with the local community including elected leaders, stakeholders and all of the customers CPA serves;
- Actively monitor and advocate for the interests of CPA and its customers in SCE ratemaking proceedings, California Public Utilities Commission (CPUC) proceedings that potentially affect exit fees paid by CPA customers, as well as all regulatory and legislative proceedings where an adverse outcome may challenge the ability of CPA to deliver on customer commitments;
- Regularly monitor and report actual and projected financial results including probability-based and stress-tested financial results assuming a range of possible future outcomes with respect to:
  - Future SCE generation and PCIA rates;
  - Future market costs for energy, environmental attributes and capacity; and
  - Anticipated or threatened regulatory actions, when appropriate.
- Adopt, implement and update, as needed, a formal Energy Risk Hedging Strategy (Appendix B) describing the strategy that CPA will follow for engaging in procurement activities; and
- Evaluate expansion of CPA’s customers base through incorporation of other eligible communities into the CCA.

2.2.2 Market Risk

Market risk is the uncertainty of CPA’s financial performance due to variable commodity market prices (market price risk) and uncertain price relationships (basis risk). Variability in market prices creates uncertainty in CPA’s procurement costs, which has a direct impact on customer rates. CPA will manage market risk through:

- Regular measurement;
- Execution of approved procurement;
- Hedging and Congestion Revenue Right strategies; and
- Use of the Limit Structure set forth in the ERMP (see limits in Section 5.1.2 and Appendix B).
2.2.3 Regulatory and Legislative Risk

CPA and other CCAs are subject to an evolving legal and regulatory landscape. Additionally, CCAs are in direct competition with California’s IOUs in supplying retail electricity and the IOUs face the risk of stranded investments in generating assets and power purchase agreements procured in the past to serve now departing CCA loads. The manner in which such stranded costs of these legacy power supplies are allocated to departing CCA loads is subject to change based on various proceedings at the CPUC. The outcome of such proceedings will directly affect the cost of power for CPA’s customers, as well as impact the rate competitiveness of CPA.

In addition to exit fees, potential regulatory and/or legislative changes could affect the ability of CPA to exercise local control over the manner and means of procuring power supplies to serve its customers.

CPA will manage regulatory and legislative risks by:

- Regularly monitor and analyze legislative and regulatory proceedings impacting CCAs; and
- Actively participate in, and advocate for, the interests of CPA and its customers during regulatory and legislative proceedings.

2.2.4 Volumetric Risk

Volumetric risk reflects the potential uncertainty in the quantity of different power supply products (e.g., renewable energy, Carbon Free Energy and capacity) required to meet the needs of CPA customers. This uncertainty can lead to adverse financial outcomes, as well as create potential for CPA to fail to meet reliability or renewable energy compliance requirements established by the State of California and/or the CPA Board. Customer load is subject to fluctuation due to customer opt-outs or departures, temperature deviation from normal, unforeseen changes in the growth of behind the meter generation by CPA customers, unanticipated energy efficiency gains, new or improved technologies, as well as local, state and national economic conditions. CPA will manage volumetric risk by taking steps to:

- Implement robust short- and long-term load and generation supply forecast methodologies, including regular monitoring of forecast accuracy through time and refining such forecasts, including by incorporating CPA’s actual load data into forecasts as such data becomes available;
- Account for volumetric uncertainty in load and/or generation supply in in the Energy Risk Hedging Strategy;
- Monitor trends in customer onsite generation, economic shifts, and other factors that affect electricity customer consumption and composition; and
- Proactively engage with customers in developing distributed energy resources and behind-the-meter generation and energy efficiency programs so as to better forecast changes in load.

2.2.5 Model Risk

Model risk has potential for an inaccurate or incomplete representation of CPA’s actual or forecast financial performance due to deficiencies in models and/or information systems used to capture all transactions. CPA will manage model risk by:
• RMT ratification of models used to forecast financial performance, net positions and/or measure risk;
• Ongoing review of model outputs;
• A requirement to record all procurement transactions in a single trade capture system; and
• Ongoing update and improvement of models as additional information and expertise is acquired and industry best practices evolve.

2.2.6 Operational Risk

Operational risk is the uncertainty of CPA’s financial performance due to weaknesses in the quality, scope, content, or execution of human resources, technical resources, and/or operating procedures within CPA. Operational risk can also be exacerbated by fraudulent actions by employees or third parties or inadequate or ineffective controls. CPA will manage operational risk through:

• The controls set forth in the ERMP;
• RMT oversight of procurement activity;
• Timely and effective reporting to the Chief Executive Officer in consultation with the RMT, and the Board;
• Implementation of a compliance training program for CPA staff;
• Ongoing CPA and Scheduling Coordinator staff education/training and participation in industry forums; and
• Annual audits to test compliance with the ERMP.

2.2.7 Counterparty Credit Risk

Counterparty credit risk is the potential that a counterparty will fail to perform or meet its obligations in accordance with terms agreed to under contract. CPA’s exposure to counterparty credit risk is controlled by the limit controls set forth in the Credit Policy described in Section 6.

2.2.8 Reputation Risk

Reputation risk is the potential that CPA’s reputation is harmed, causing customers to opt-out of CPA service and migrate back to SCE. Reputational risk is also the potential that energy market participants view CPA as an untrustworthy business partner, thus reducing the pool of potential counterparties and/or having counterparties apply a CPA-specific risk premium to pricing. Reputational risk is managed through:

• Implementation of and adherence to the ERMP;
• Engaging in ethical, transparent and honest business practices during trading activities; and
• Establishment and adherence to industry best practices including both those adopted by other CCAs, as well as those adopted by traditional municipal electric utilities.
Section 3: BUSINESS PRACTICES

3.1 General Conduct

It is the policy of CPA that all Board members, staff, and consultants (collectively referred to “CPA Representatives”), adhere to standards of integrity, ethics, conflicts of interest, compliance with statutory law and regulations and other applicable CPA standards of personal conduct while employed by or affiliated with CPA. Towards this end, all persons performing marketing and trading functions on behalf of CPA shall be subject to, read, understand, and abide by the provisions contained in the CPA Code of Marketing and Trading Practices (see Appendix F).

3.2 Trading for Personal Accounts

All CPA Representatives participating in any transaction or activity within the coverage of the ERMP are required to comply with the CPA Conflict of Interest Code approved by the Fair Political Practices Commission and are obligated to give notice in writing to CPA of any legal, financial or personal interest such person has in any counterparty that seeks to do business with CPA, and to identify any real or potential conflict of interest such person has or may have with regard to any existing or potential contract or transaction with CPA, within 48-hours of becoming aware of the conflict of interest. Written notice should be submitted to the Chief Executive Officer substantially in the form of the letter notification shown in Appendix E. This written notice obligation shall be in addition to the regulations or requirements of the Fair Political Practices Commission (e.g., Statement of Economic Interests, Form 700) and any policy adopted by the CPA Board of Directors, including but not limited to the Vendor Communication Policy No. 2019-10.

Further, all persons are prohibited from personally participating in any transaction or similar activity that is within the coverage of the ERMP, or prohibited by California Government Code Section 1090, and that is directly or indirectly related to the trading of electricity and/or environmental attributes as a commodity.

If there is any doubt as to whether a prohibited condition exists, then it is the CPA Representative’s responsibility to discuss the possible prohibited condition with CPA General Counsel.

3.3 Adherence to Statutory Requirements

All CPA Representatives are required to comply with rules promulgated by the State of California, CPUC, California Energy Commission, Federal Energy Regulatory Commission (FERC), Commodity Futures Trading Commission (CFTC), and other regulatory agencies.

Congress, FERC and CFTC have enacted laws and regulations that prohibit, among other things, any action or course of conduct that actually or potentially operates as a fraud or deceit upon any person in connection with the purchase or sale of electric energy or transmission services. These laws also prohibit any person or entity from making any untrue statement of fact or omitting a material fact where the omission would make a statement misleading. Violation of these laws can lead to both civil and criminal actions against the individual involved, as well as CPA. The ERMP is intended to comply with these laws, regulations and rules and to avoid improper conduct on the part of anyone employed by CPA.
procedures may be modified from time to time based on legal requirements, auditor recommendations, and other considerations.

In the event of an investigation or inquiry by a regulatory agency, CPA will provide legal counsel to employees provided the subject of the investigation is within the employee’s course and scope of employment. However, CPA reserves the right to refrain from providing legal counsel if it reasonably appears to the CPA General Counsel and Chief Executive Officer that the employee was either not acting in good faith or was acting outside the course and scope of his or her employment.

CPA employees are prohibited from working for another power supplier, CCA or utility while they are simultaneously employed by CPA unless an exception is authorized by the Board.

3.4 Transaction Type

Authorized transaction types are listed in Appendix C. Each approved transaction type that is listed is included to either meet a mandatory procurement obligation required of all Load Serving Entities (LSE) serving retail loads in California; and/or alternatively, the approved product is needed for CPA to meet an identified ERMP goal. Major transaction types include:

- Resource Adequacy Capacity is a mandatory procurement obligation that ensures adequate generation supplies are available on a planning basis to reliably meet the requirements of electric consumers in the California Independent System Operator (CAISO) balance authority;
- Portfolio Content Category 1 (PCC1) and Portfolio Content Category 2 (PCC2) renewable energy must be procured by CPA to comply with the state of California’s Renewable Portfolio Standard, as required by SB 350. CPA has made a voluntary decision to purchase incremental quantities of PCC1 and/or PCC2 renewable energy to exceed the renewable portfolio content of the incumbent utility;
- Carbon Free Energy is a voluntary purchase of specified source energy from large hydroelectric generation than enables CPA to provide its customers with electricity sourced from generators producing low GHG emissions so that member agencies can meet their climate action plans and CPA can contribute to combatting climate change;
- Physical Energy products are a voluntary purchase made by CPA to provide cost certainty and rate stability for customers; and
- The CAISO is the largest grid operator in the state of California and CPA members lie within its balancing area. CAISO operates Day-Ahead, Fifteen Minute and Real-Time Markets and other ancillary markets necessary for reliable operation of the grid. CPA is required to participate in CAISO markets. Acquisition of the CAISO products listed in Appendix C either result from mandatory participation in CAISO’s markets, or are useful for managing short-term market risks associated with CAISO’s markets.

The strategy for using and procuring the approved products is described in further detail in the Energy Risk Hedging Strategy.

3.4.1 Exceptions

New transaction types may provide CPA with additional flexibility and opportunity but may also introduce new risks. Therefore, transaction types not included in Appendix C must be approved by the RMT and the
Board prior to execution using the process defined below.

When seeking approval for a new transaction type, a New Transaction Type Approval Form, as shown in Appendix D, is to be drafted describing all significant elements of the proposed transaction. The proposal write-up will, at a minimum, include:

- A description of the benefit to CPA, including the purpose, function and expected impact on costs (i.e.; decrease costs, manage volatility, control variances, etc.);
- Identification of the in-house and/or external expertise that will manage and support the new or non-standard transaction type;
- Assessment of the transaction’s risks, including any material legal, tax or regulatory issues;
- How the exposures to the risks above will be managed by the Limit Structure;
- Proposed valuation methodology (including pricing model, where appropriate);
- Proposed reporting requirements, including any changes to existing procedures and system requirements necessary to support the new transaction type;
- Proposed accounting methodology; and
- Proposed work flows/methodology (including systems).

It is the responsibility of the Middle Office to ensure that relevant departments have reviewed the proposed transaction type and that material issues are resolved prior to submittal to the Board for approval. If the transaction type is approved, Appendix C to the ERMP will be updated to reflect its addition.

3.5 Counterparty Suitability

All counterparties with whom CPA transacts must be reviewed for creditworthiness and assigned a Credit Limit as described in Section 6.

3.6 System of Record

Since information systems play a vital role for CPA’s trading and risk management abilities, CPA shall maintain and secure a System of Record. CPA’s transaction and contract data are also stored in its Scheduling Coordinator’s energy trading and risk management system.

CPA’s Technology and Data and Systems group supports the security, integrity, and recoverability of the System of Record. The Scheduling Coordinator has assigned a Database Administrator (DBA) that is charged with database security and maintenance for the Scheduling Coordinator’s transaction database. For data recoverability, transaction data stored in the System of Record is replicated daily to ensure data redundancy and is backed-up via cloud-based applications.

All transaction records will be maintained in US dollars and will be separately recorded and categorized by type of transaction and other characteristics, in line with standard industry practice. This System of Record shall be auditable and audited as appropriate.

3.7 Transaction Valuation

Transaction valuation and mark-to-market (valuing of an asset based on its current market price) reporting of positions shall be based on independent, publicly available, market-observed prices (replacement costs)
whenever possible. In the event there are not market-observed prices, the value of CPA’s transactions shall follow a notional value calculation (the total nominal dollar value of a transaction over its full duration) or other methodology approved as part of the new product approval process.

All transactions and open positions will be valued daily.

### 3.8 Stress Testing

In addition to limiting and measuring risk using the methods described herein, stress testing shall also be used to examine performance of the CPA portfolio under potential adverse conditions. Stress testing is used to understand the potential variability in CPA’s projected procurement costs and resulting impacts on customer rates and CPA’s competitive positioning associated with low probability events. The Middle Office will perform stress-testing of the portfolio as directed by the RMT.

### 3.9 Trading Practices

As previously noted, CPA exists to serve its customers. The scope of its wholesale market operations is limited to that which is required to meet the power supply obligations of its customers consistent with ERMP goals. It is the expressed intent of the ERMP to prohibit wholesale market activities that result in procurement of any power supply product beyond that which is required to meet an identifiable need of CPA customers. The purchase or sale of any power supply product beyond what is reasonably anticipated to be needed to meet the requirements of CPA customers is a speculative transaction and is prohibited.

In the course of developing operating plans and conducting procurement activities, CPA recognizes that staff must employ reasonable expertise and judgment, and it is not the intent of the ERMP to restrain the legitimate application of analysis and market expertise in executing procurement strategies intended to minimize costs or maximize the value of generation within the constraints of the ERMP. If any questions arise as to whether a proposed transaction(s) constitutes speculation, the RMT shall review the transaction(s) to determine whether the transaction(s) would constitute speculation and shall document its findings. As used here, “speculation” means the act of trading an asset with the expectation of realizing financial gain resulting from a change in price in the asset being transacted.

Staff and consultants engaged in procurement activities will also observe the following practices:

- Persons shall conduct business in good faith and in accordance with all applicable laws, regulations, tariffs and rules;
- Persons shall not arrange or execute wash trades (i.e., offsetting transactions where no financial risk is taken);
- Persons shall not disseminate known false or misleading information or engage in transactions to exploit such information;
- Persons shall not game or otherwise interfere with the operation of a well-functioning competitive market;
- Persons shall not collude with other market participants; and
- Persons shall immediately report any known or suspected violation of the ERMP.
3.10 Training

CPA recognizes the importance of ongoing education to manage risk and to contribute to ERMP success. Towards this end, CPA will observe the following practices:

- All employees executing procurement transactions on behalf of CPA must receive appropriate training in the attributes of each product type that they transact, how the product furthers the portfolio objectives of CPA, and how the risk profile of CPA is impacted by procurement of each product;
- All employees executing procurement activities shall complete required and available energy market compliance training as determined by the Chief Operating Officer once per calendar year and acknowledge receipt of said training in writing;
- The Human Resources Department shall maintain records of each employee’s training status.
Section 4: ORGANIZATIONAL STRUCTURE AND RESPONSIBILITIES

4.1 Board of Directors Responsibilities

The Board has the responsibility to review and approve the ERMP. With this approval, the Board acknowledges responsibility for understanding the risks CPA is exposed to through its CCA activity and how the policies outlined in the ERMP help CPA manage the associated risks. The Board is also responsible to:

- Provide strategic direction to CPA;
- Consider transactions beyond authorities delegated to the Chief Executive Officer in consultation with the RMT;
- Consider changes to the Energy Risk Hedging Strategy (see Appendix B); and
- Consider new transaction types not currently listed in the ERMP (see Appendix C).

4.2 Risk Management Team

The RMT is responsible for implementing, maintaining and overseeing compliance with the ERMP and for maintaining the Energy Risk Hedging Strategy. At a minimum, the members of the RMT shall consist of include the Chief Executive Officer, the Chief Operating Officer, the Chief Financial Officer, and the Vice President of Power Supply. In the event of any Vacancy, the RMT may (i) appoint interim RMT member(s) or (ii) operate the RMT with the remaining RMT member(s), until such time as the Vacancy is filled or the reason for the Vacancy no longer exists.

The primary goal of the RMT is to ensure that the procurement activities of CPA are executed within the guidelines of the ERMP and are consistent with Board directives. The RMT shall consider and propose changes to the ERMP when conditions dictate.

Pursuant to direction and delegation from the Board of Directors and the limitations specified by this ERMP, the Chief Executive Officer, in consultation with the RMT, maintains authority over procurement activities for CPA. This authority includes, but is not limited to, taking any or all actions necessary to ensure compliance with the ERMP.

The RMT responsibilities may include, but are not limited to:

- Maintain the Energy Risk Hedging Strategy and ensure that all procurement strategies and related protocols are consistent with the ERMP;
- Review financial and risk models and subsequent changes;
- Establish counterparty Credit Limits;
- Review initial counterparty credit review models and methods for setting and monitoring Credit Limits and subsequent changes;
- Review reports as described in the ERMP;
- Meet to review actual and projected financial results and potential risks;
- Keep apprised of any change in the environment in which CPA operates that has a material effect upon the risk profile of CPA;
• Review summaries of limit violations and recommend corrective actions, if necessary; and
• Review the effectiveness of CPA’s energy risk measurement methods.

4.3 Segregation of Duties

CPA shall work to maintain a segregation of duties, also referred to as “separation of function” to help manage and control the risks outlined in the ERMP. Individuals responsible for legally binding CPA to a transaction will not also perform confirmation or settlement functions without supplemental, transparent, and auditable controls. CPA also will leverage the organizational structure of the Scheduling Coordinator’s Middle and Back offices to help maintain a segregation of duties. The Front, Middle and Back Office responsibilities for CPA are described below.

4.3.1 Front Office

The Front Office is headed by the Vice President, Power Supply. The Front Office has overall responsibility for (1) managing all activities related to procuring and delivering resources needed to serve CPA load, (2) analyzing fundamentals affecting load and supply factors that determine CPA’s net position, and (3) transacting within the limits of the ERMP and associated policies to balance loads and resources and maximize the value of CPA assets through the exercise of approved optimization strategies. Other duties associated with these responsibilities include:

• Assist in the development and analysis of risk management hedging products and strategies, and bring recommendations to the RMT;
• Prepare a monthly operating plan for the prompt month (the month following the current month) that gives direction to the Day-Ahead and Real-Time Market trading and scheduling staff regarding the bidding and scheduling of CPA’s resource portfolio in the CAISO market;
• Calculate and maintain the net forward positions (a forecast of the anticipated electric demands compared to existing resource commitments) of CPA for all power products (energy, renewable energy, Carbon Free Energy and Resource Adequacy Capacity);
• Develop, price and negotiate hedging products;
• Oversee scheduling of load and resources into CAISO;
• Keep accurate records of all executed transactions;
• Manage and facilitate the transaction execution process for power supply transactions through coordination of the following activities:
  o Notify Front Office personnel of any anticipated unique physical delivery or scheduling issues;
  o Work with Middle Office personnel and legal counsel to establish a contract, evaluate counterparty creditworthiness and secure additional credit from the counterparty, if necessary;
  o Work with Middle Office, as needed, to perform an analysis of the potential transaction to evaluate the effect on CPA’s portfolio risks;
  o Notify Back Office of terms and conditions affecting settlement to ensure that the necessary settlement procedures are in place.
4.3.2 Middle Office

The Middle Office functions are the responsibility of the Chief Financial Officer. The Middle Office provides market and credit risk oversight, has responsibility for development of risk management policies and procedures, monitors compliance with the same, and keeps management and the Board informed on risk management issues. CPA will maintain its Middle Office functions independent from the front and back office functions.

Middle Office responsibilities include the following:

- Create and ensure compliance with policies outlining standard procedures for conducting business;
- Oversee short-term and long-term load forecasting;
- Estimate and publish daily forward monthly power curves and weekly publish natural gas price curves for a minimum of the balance of the current year through the next calendar year;
- Verify the net forward positions of CPA for all power products;
- Ensure that CPA adheres to all risk policies and procedures;
- Implement and enforce credit policies and limits;
- Confirm all transactions conform to commercial terms and alert Front Office to discrepancies;
- Ensure all trades have been entered into the System of Record as well as the Scheduling Coordinator’s transaction data management system;
- Ensure that all CAISO Day-Ahead, Fifteen Minute and Real-Time Market delivery volumes and prices are entered into a transaction database;
- Review models and methodologies and recommend RMT approval, as needed;
- Mark unrealized and realized gains and losses associated with CPA hedge activity.
- Development and maintain financial and energy risk management models as directed by the RMT
- Develop and maintain load forecasting models and perform long term load forecasts as directed by RMT

4.3.3 Back Office

The Back Office functions are the responsibility of the Chief Financial Officer. It provides support with a wide range of administrative activities necessary to execute and settle transactions and to support the risk control efforts (e.g., transaction entry and/or checking, data collection, billing, etc.) consistent with the ERMP. Through its partnership with the Scheduling Coordinator, CPA will maintain its Back Office functions independent from the Front and Middle Office functions.

Back Office responsibilities include the following:

- Ensuring timely and accurate financial reporting;
- Maintaining a system of financial controls and business processes that control financial risk;
- Maintaining the overall financial security of transactions undertaken on behalf of CPA;
● Carrying out month-end checkout of all transactions each month; and
● Validation and prompt payment of energy related invoices payable by CPA and resolving disputes with counterparties;
● Generation and prompt collection of energy related invoices payable by counterparties
Section 5: DELEGATION OF AUTHORITY

5.1 Risk Limits

The following limits apply to all CPA procurement activities. These limits are Board-approved and define the limits that CPA must operate within. The metrics and management of risk within these limits is further described in the Energy Risk Hedging Strategy.

5.1.2 Delegation Authority

Through its approval of the ERMP, the Board has delegated operations and oversight to the Chief Executive Officer, in consultation with the RMT, as outlined through the ERMP. Specifically, to facilitate daily operations of the CCA, the Board has delegated transaction execution authorities shown in the table below.

<table>
<thead>
<tr>
<th>Position</th>
<th>Transaction Type</th>
<th>Term Limit*</th>
<th>Maturity Limit</th>
<th>Counterparty Limit</th>
<th>Notional Value Limit (per transaction)</th>
<th>Notional Value Limit (annual)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Executive Officer in consultation with the RMT</td>
<td>Tolling Agreements</td>
<td>3 years 5-years</td>
<td>3-years</td>
<td>Pursuant to Credit Policy in Section 6 of this Policy</td>
<td>Within hedge Board-approved limits set approved in the Energy Risk Hedging Strategy in Appendix B of this Policy</td>
<td></td>
</tr>
<tr>
<td></td>
<td>New Build</td>
<td>5 years</td>
<td>7 years</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Any transactions other than Tolling Agreements or New Build</td>
<td>10 years 5-years</td>
<td>10 years</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chief Executive Officer</td>
<td># # # # #</td>
<td>1-year</td>
<td></td>
<td></td>
<td>$10m</td>
<td>$80m</td>
</tr>
</tbody>
</table>

* See Appendix A for definitions of “Tolling Agreement,” “Term Limit,” “Maturity Limit,” and “New Build.”

For operational flexibility, the Chief Executive Officer will have the authority to delegate transaction execution authority to either the Chief Operating Officer, or Vice President, Power Supply, as needed. Any delegation will be documented in writing using the form in Appendix G.

For a transaction to be valid, it must conform to each of the four limits specified in the above Table 5.1.2, above.

These limits will be applied to wholesale power procurement outside of transactions directly executed.
with the CAISO. These limits provide CPA the needed authority to manage risks as they arise. Transactions falling outside the delegations above require Board approval prior to execution.

Transactions with CAISO and CAISO administrative fees are excluded from this table. CAISO transactions are limited to those required for scheduling contracts in the CAISO market and for balancing CPA’s load and resources.

5.1.3 Long-Term Procurement

Long-term procurement, defined as transactions contract terms greater than 5-the Limits specified in Table years.\textsuperscript{5.1.2} will be subject to Board approval. Long-term contracts are procured through solicitations, bilateral negotiations, or regulatory proceedings, with oversight including shortlist approvals or procurement recommendations, provided by the Energy Resources & Planning Committee of the Board.

All long-term contracts are evaluated using standard evaluation criteria, including economic value over the life of the contract and any additional evaluation criteria established by the Energy Resources & Planning Committee and consistent with Board policy directives. Proposals received in solicitations, including all pricing and other confidential submission information, are reviewed by an RFO Review Team comprised of the Chief Executive Officer, additional Staff members as determined by the Chief Executive Officer, and a subset of Board members serving on the Energy Resources and Planning Committee, unless otherwise determined appropriate by the Chief Executive Officer and General Counsel in consultation with the Board Chair and Chair of the Energy Resources and Planning Committee. Proposals, either from solicitations, bilateral negotiations, or regulatory proceedings, are evaluated by the Energy Resources & Planning Committee and approved for contract negotiations. Final awards are then presented for Board consideration in accordance with applicable law.\textsuperscript{2}

Any amendments to a Board-approved long-term contract that make material changes to the terms of the contract including, but not limited to, changes to price, volume, project size, commercial operation date, counterparty security requirements, or other amendments that impact the evaluation criteria upon which a project was approved must be also approved the Board.

Minor, non-core amendments, or additional agreements that are administrative in nature or arising from the counterparties effectuating their obligations related to the project under normal course of business (e.g., implementing project financing, consent to collateral assignment, assignments, changes to progress reporting forms, insurance obligations, or termination), may be approved and executed by the Chief Executive Officer or Chief Operating Officer.

All procurement executed under the delegation above must align with CPA’s underlying risk exposure (i.e., load requirements, locational and temporal) that is being hedged consistent with the Energy Risk Hedging Strategy. The RMT will consider risks associated with executed or planned long-term procurement within its evaluation of overall portfolio risk and procurement decision-making.

5.1.4 Volume Limits

Transactions should not be executed that exceed CPA’s energy, capacity, or renewable or Carbon Free

\textsuperscript{2} Awards will be presented without market sensitive information (i.e., pricing or other sensitive commercial terms) for Board consideration in accordance with applicable law.
Energy requirements. If there is an adjustment to CPA requirements resulting in the volume of existing transactions exceeding CPA’s requirements, the RMT will determine the most favorable strategy to appropriately rebalance the portfolio.

An exception to the above limits may be made by the RMT if executing a transaction exceeding load will minimize costs or is necessary to ensure compliance. For example, procuring RA for the entire year could cause CPA to hold excess RA in certain months. Such a transaction would be acceptable if a lower cost alternative transaction or set of transactions that more closely matches monthly needs is unavailable.

5.1.5 Locational Limits
The delivery location for all transactions must support the requirements of CPA’s source or sink locations.

5.1.6 CAISO Submission Limits
CPA shall bid at least 80% of its forecast load requirements in the Day-Ahead Market and bids shall not exceed 100% of forecast load requirements.

CPA shall offer no more than 100% of the forecasted generation capability in the Day-Ahead Market. CPA shall follow CAISO protocols for all activity within CAISO.

5.2 Monitoring, Reporting and Instances of Exceeding Risk Limits
The Middle Office is responsible for monitoring and reporting compliance with all limits within the ERMP. If a limit or control is violated, the Middle Office will send notification to the trader responsible for the violation and the RMT. The RMT will discuss the cause and potential remediation of the exceedance to determine next steps for curing the exceedance.
Section 6: CREDIT POLICY AND COUNTERPARTY SUITABILITY

Prior to execution of any transaction, the Front Office will verify that CPA has executed a master agreement with the counterparty, that the counterparty has been evaluated for creditworthiness, and that an approved Credit Limit has been established. No transactions may be executed without first ensuring the transaction falls within the unutilized Credit Limit for the counterparty or has been approved on an exception basis by the Chief Financial Officer.

6.1 Master Enabling Agreements and Confirmations

Transactions are governed by master agreements, the forms of which must be prepared by CPA General Counsel and approved by the Board. No transactions may be executed without a fully executed master agreement being on file. Written confirmations of each transaction will contain standard commercial terms and provisions. Material modifications or additions to standard commercial terms in confirmations require approval by legal counsel. Modifications to standard credit terms in confirmations or enabling agreements require approval by CFO.

It is CPA’s policy to confirm all transactions in writing. All confirmations received from counterparties will be matched against trades in the System of Record. Any discrepancies between a confirmation and the System of Record may be handled by the Front Office representative that executed the transaction, or if necessary, a Middle Office representative will seek resolution with the counterparty. All confirmations will be kept on file.

6.1.1 Exceptions

It is standard industry practice to not provide written confirmation of certain short-term transactions with a term of one day or less. Additionally, CPA may agree with certain counterparties to alternative methods for confirming certain transactions. Transactions executed in a recorded telephone conversation or recorded instant message in which the offer and acceptance shall constitute the agreement of the parties must be confirmed in writing after-the-fact, with notice being provided to the counterparty within 72 hours.

6.2 Counterparty Suitability

All counterparties shall be evaluated for creditworthiness by the Middle Office prior to execution of any transaction and no less than annually thereafter. Additionally, counterparties shall be reviewed if a change has occurred, or if perceived to have occurred, in market conditions or in a company’s management or financial condition. This evaluation, including any recommended increase or decrease to a Credit Limit, shall be documented in writing and include all information supporting such evaluation in a credit file for the counterparty.

Counterparty Credit Limits, and credit and payment terms will be recommended by the Middle Office for approval by the RMT consistent with CPA’s Credit Protocols. The Middle Office will undertake credit analysis that shall include, at a minimum, an evaluation of current audited financial statements or other supplementary data and consider factors such as:

- Liquidity
• Leverage (debt)
• Profitability
• Net worth
• Cash flow
• Proposed collateral and other contract terms

Counterparty’s senior unsecured or corporate credit rating will be obtained from one of the nationally recognized rating agencies (S&P, Moody’s, and/or Fitch) if available. Trade and banking references, and any other pertinent information, may also be used in the review process.

When establishing credit and payment terms, RMT will consider the Credit Limit of the counterparty, current exposure to the counterparty, the product type and tenor of existing and/or future transactions, notional value of proposed or future transactions with the counterparty and the availability/scarcity and commercial significance of the product being traded. A counterparty may choose to provide a guarantee from a third party, provided the third party satisfies the criteria for a Credit Limit as outlined herein.

6.3 Maximum Credit Limit
Each new counterparty Credit Limit or increase to an existing limit will be reviewed by the RMT. The maximum amount of any Credit Limit extended to a counterparty shall not exceed $50,000,000 unless approved in writing by the Board. Unless approved in writing by the Board.

6.4 Credit Review Exceptions
Counterparties not subject to the above credit review criteria include those associated with Day-Ahead and current day purchases where risks associated with market movements are minimal.

6.5 Credit Limit and Monitoring
The Middle Office will monitor the current credit exposure for each counterparty with whom CPA transacts and include such information in the Current Counterparty Credit Risk Report. This report will be submitted to the RMT for review pursuant to the reporting requirements outlined in Section 7.

Current credit exposure is a measure of the known exposures and composed of two primary exposures – (1) realized exposure, and (2) forward exposure. Realized exposure, a payable or receivable amount owed between counterparties, is a measurement of cash flow for billed and unbilled transactions. Forward exposure is a measure of current unrealized exposure and includes the measure of a counterparty’s incentive to fulfill contractual obligations. Forward exposure measures the risk associated with having a payment default or the need to replace a transaction in the event of delivery default.

6.6 CPA Credit Support
Counterparties may require CPA to post a form of credit support, such as cash or a letter of credit. The Middle Office will ensure that any CPA credit support requirements are evaluated and approved within the context of the overall transaction approval as specified herein.
Section 7: POSITION TRACKING AND MANAGEMENT REPORTING

A vital element in the ERMP is the regular identification, measurement and communication of risk. To effectively communicate risk, all risk management activities must be monitored on a frequent basis using risk measurement methodologies that quantify the risks associated with CPA’s procurement-related business activities and performance relative to identified goals.

Minimum reporting requirements are shown below. The reports outlined below will be presented to the RMT, except reports to the Board. Reports will be generated weekly unless otherwise noted.

- **Financial Model Forecast**
  
  Latest projected financial performance, marked to current market prices, and shown relative to CPA’s financial goals.

- **Net Position Report**
  
  Latest forward net position report, by product type (energy, PCC1, PCC2, Carbon Free Energy and RA capacity) for the current and prompt year.

- **Counterparty Credit Exposure**
  
  Current counterparty credit exposure compared against limits approved by CPA, as well as the limit assigned to CPA by the counterparty.

- **Monthly Risk Analysis**
  
  Cash flow forecasting and stress testing of financial forecasts relative to financial goals. Gross margin at risk reporting. Additional discussion of the specific gross margin at risk reporting and its application is provided in the Energy Risk Hedging Strategy.

- **Monthly Transaction Reporting**

  The following transactions executed under the authority delegated in Section 5.1.2 will be reported monthly to the Board: (i) Any Tolling Agreement; (ii) any transaction with a Term greater than five years.

- **Quarterly Board Report**
  
  Update on activities, projected financial performance, and general market outlook to be presented quarterly at Board meetings, communicated in a way to ensure CPA confidentiality and market sensitive data is not released.
Section 8: ERMP REVISION PROCESS

The ERMP will evolve over time as market and business factors change. At least on an annual basis, the Chief Executive Officer, in consultation with the RMT, will review the ERMP and associated procedures to determine if they should be amended, supplemented, or updated to account for changing business conditions and/or regulatory requirements. If an amendment is warranted, the ERMP amendment will be submitted to the Board for approval. Changes to ERMP appendices may be approved and implemented by the Chief Executive Officer, in consultation with the RMT, with the exception of new transaction types and changes to the Energy Risk Hedging Strategy, which also require Board approval.

8.1 Acknowledgement of ERMP

All CPA Representatives participating in any activity or transaction within the scope of the ERMP or in the case of a consultant, an executive of the consultant or a delegated representative authorized to bind the consultant with regard to ERMP obligations shall sign, on an annual basis or upon any revision, a statement approved by the Chief Executive Officer, in consultation RMT, that such CPA Representative has:

- Read the ERMP;
- Understands the terms and agreements of said ERMP;
- Will comply with said ERMP;
- If an employee, understands that any violation of said ERMP shall subject the employee to discipline up to and including termination of employment;
- If a consultant, understands that any violation of said ERMP may be grounds for consultant contract termination; and
- If a Board member, understands that any violation of said ERMP shall subject the Board member to action by the Board.

8.2 ERMP Interpretations

Questions about the interpretation of any matters of the ERMP should be referred to the Director, Energy Market Risk Management.

All legal matters stemming from the ERMP will be referred to CPA counsel.
Appendix A: DEFINITIONS

**Back Office:** That part of a trading organization which handles transaction accounting, confirmations, management reporting, and working capital management.

**CAISO:** California Independent System Operator. CAISO operates a California bulk power transmission grid, administers the State’s wholesale electricity markets, and provides reliability planning and generation dispatch.

**Calendar Quarter:** A three-month period that commences on January 1, April 1, July 1 or October 1 and ends on March 31, June 30, September 30 or December 31, respectively.

**Calendar Year:** A 12-month period that commences on January 1 and ends on December 31.

**Carbon Free Energy:** Energy that is generated from a specific zero carbon emitting generating asset. It is commonly used to note energy from large hydroelectric or nuclear generation that while non-carbon emitting, is not an RPS-eligible generation source. Sometimes referred to as specified source energy.

**CCA:** Community Choice Aggregator. CCAs allow local government agencies such as cities and/or counties to purchase and/or develop generation supplies on behalf of their residents, businesses and municipal accounts.

**CFTC:** Commodity Futures Trading Commission. The CFTC is a U.S. federal agency that is responsible for regulating commodity futures and swap markets. Its goals include the promotion of competitive and efficient futures markets and the protection of investors and market participants against manipulation, abusive trade practices and fraud.

**Congestion Revenue Right:** A point-to-point financial instrument in the Day-Ahead Energy Market that entitles the holder to receive compensation for or requires the holder to pay certain congestion related transmission charges that arise when the transmission system is congested.

**Credit Limit:** The maximum amount of financial exposure one party is willing to extend to another.

**Day-Ahead Market:** The short-term forward market conducted by an Organized Market prior to the operating day. It is intended to efficiently allocate transmission capacity and facilitate purchases and sales of energy and scheduling of bilateral transactions.

**FERC:** Federal Energy Regulatory Commission. FERC is a federal agency that regulates the interstate transmission of electricity, natural gas and oil. FERC also reviews proposals to build liquefied natural gas terminals, interstate natural gas pipelines, as well as licenses hydroelectric generation projects.

**Front Office:** That part of a trading organization which solicits customer business, services existing customers, executes trades and ensures the physical delivery of commodities.

**Franchise Fee:** A franchise fee is a percentage of gross receipts that an IOU pays cities and counties for the right to use public streets to provide gas and electric service. The franchise fee surcharge is a percentage of the transmission (transportation) and generation costs to customers choosing to buy their energy from third parties. IOUs collect the surcharges and pass them through to cities and counties.

**IOU:** An Investor Owned Utility (IOU) is a business organization providing electrical and/or natural gas services to both retail and wholesale consumers and is managed as a private enterprise.

**Limit Structure:** A set of constraints that are intended to limit procurement activities.

**Maturity Limit:** The maximum time period between transaction execution date and the date of the final
delivery of the contracted product

**Middle Office:** That part of a trading organization that measures and reports on market risks, develops risk management policies and monitors compliance with those policies, manages contract administration and credit, and keeps management and the Board informed on risk management issues.

**New Build:** The development and construction of a new generating or storage facility or an expansion, upgrade, or redevelopment of an existing facility where incremental capacity is offered.

**PCIA:** Power Cost Indifference Adjustment or successor. The PCIA is intended to compensate IOUs for their stranded costs when a bundled customer departs and begins taking generation services from a CCA.

**Portfolio Content Category 1 (PCC1) Renewable Energy:** Energy and bundled Renewable Energy Credits that is simultaneously procured from an RPS-Eligible Facility that is directly interconnected to the distribution or transmission grid within a California balancing authority area (CBA); or that is not directly interconnected to a CBA but is delivered to a CBA without substituting electricity from another source.

**Portfolio Content Category 2 (PCC2) Renewable Energy:** Energy and bundled Renewable Energy Credits that is simultaneously purchased from an RPS-Eligible Facility, but the energy is firmed and shaped with substitute electricity scheduled into a CBA within the same calendar year as the renewable energy is generated.

**Portfolio Content Category 3 (PCC3) Renewable Energy:** Renewable Energy Credits from RPS-eligible facilities that do not meet the definition of PCC1 or PCC2.

**Prompt Quarter (PQ):** The Calendar Quarter beginning immediately after the current Calendar Quarter. PQ + n is the n\(^{th}\) Calendar Quarter following Prompt Quarter.

**Prompt Year (PY):** The Calendar Year year beginning immediately after the current Calendar Year on the next January 1 and ending on the subsequent December 31. PY + n is the n\(^{th}\) Calendar Year following Prompt Year.

**Real-Time Market:** The real-time market is a spot market in which LSEs can buy power to meet the last few increments of demand not covered in their day ahead schedules, up to 75 minutes before the start of the trading hour.

**Resource Adequacy Capacity:** A capacity product whereby a Seller commits to a must offer obligation of its generator in the CAISO market and on behalf of a specified Load Serving Entity.

**RPS-Eligible Facility:** Defined under CA Public Utilities Code § 399.11 et seq. and CA Public Resources Code § 25740 et seq. as an electrical generating facility using technologies such as biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, ocean wave, ocean thermal, or tidal current.

**Settlement:** Settlement is the process by which counterparties agree on the dollar value and quantity of a commodity exchanged between them during a particular time interval.

**Stress testing:** Stress testing is the process of simulating different financial outcomes to assess potential impacts on projected financial results. Stress testing typically evaluates the effect of negative events to help inform what actions may be taken to lessen the negative consequences should such an event occur.

**System of Record (SOR):** An information storage system that is the authoritative data source for a given data element or piece of information.

**Term Limit:** The total duration of the contract counted as the maximum time period between the
beginning flow date of contracted product deliveries and the ending flow date of contracted product deliveries, inclusive.

**Tolling Agreement:** An agreement between a power buyer and a power generator, under which the buyer supplies the fuel, either physically or financially, and receives an amount of power generated based on an assumed conversion rate at an agreed cost. Typically used for generation facilities powered by natural gas and excludes battery storage.

**Vacancy:** A vacancy exists in the case of death, incapacity, illness, an excused absence, family emergency, jury duty, religious observance, vacation, resignation or termination of employment from CPA, a material change in a member’s job duties or responsibilities, conflict of interest, or an unavoidable absence.
Appendix B: ENERGY RISK HEDGING STRATEGY

1.1 Introduction

CPA is routinely exposed to commodity price risk and volume variability risk in the normal conduct of serving the power supply requirements of its customers.

This Energy Risk Hedging Strategy (ERHS) describes the strategy and framework that CPA will use to hedge the power supply requirements of its customers. Specific focus is on procurement of the following market-based products:

- Fixed Priced Energy
- Portfolio Content Category 1 Renewable Energy
- Portfolio Content Category 2 Renewable Energy
- Carbon Free Energy
- Resource Adequacy Capacity

In addition to market-based transactions entered into pursuant to this ERHS, CPA will also enter into longer-term power purchase agreements (PPAs) pursuant to statutory requirements (e.g., SB 350 mandate to, by 2021, procure a minimum of 65 percent of RPS requirements under a 10-year or longer power purchase agreement), as well as voluntary long-term resource acquisition decisions made independently by CPA pursuant to its Integrated Resource Plan or other approved Board-approved strategies. Long-term Power Purchase Agreements (PPAs) will count as hedges as described later in this ERHS.

2.1 Governance

This ERHS shall be updated, as necessary, from time to time and governed by the Energy Risk Management Policy (EMRP) approved by the CPA Board of Directors.

3.1 Hedging Program Goals

The overall goal of the ERHS is to identify exposure to commodity prices, quantify the financial impact variability in commodity prices, load requirements and generation output may have on the ability of CPA to meet its financial program goals, and manage the associated risk.

The primary goals that guide this ERHS are:

- Acquire a portfolio of resources with lower greenhouse gas emissions and higher renewable content than SCE;
- Meet reliability requirements established by the state of California, and operate in a manner consistent with prudent utility practice;
- Maintain competitive retail rates with SCE after adjusting for exit fees (currently the Power Charge Indifference Adjustment or PCIA) and Franchise Fees paid by CPA customers;
- Build financial reserves to ensure the CPA’s long-term financial objectives are achieved.

All hedging activities will be conducted to achieve results consistent with the above goals and to meet the
power supply requirements of CPA’s customers. Any transaction that cannot be directly linked to a requirement of serving CPA’s customers, or that serves to reduce risk is prohibited.

4.1 Hedging Targets and Strategies

4.1.1 Fixed Price Energy

Fixed Price Energy purchases provide for suppliers to deliver energy – for which CPA will receive energy market revenues – to CPA at a fixed price. They are used to manage the electricity commodity price risk that the CPA faces as a Load Serving Entity. Specific to CPA’s customers, Fixed Price Energy hedges are used to provide cost certainty and rate stability.

CPA predominantly employs Fixed Price Block Energy contracts, which provide for suppliers to deliver a predetermined volume of energy at a constant delivery rate. As CPA enters into long-term, fixed price contracts for renewable and/or carbon-free energy, these will likewise hedge CPA’s market risk and, subsequently, reduce the required volume of Fixed Price Block Energy purchases.

When assessing its requirements for Fixed Price Energy, CPA will use an econometric model to forecast hourly energy requirements and monthly peak demand by customer load class. The model will use historical data to estimate relationships between energy consumption and economic, demographic and/or weather variables. The model will be refined through time as additional load and other data is acquired.

CPA will observe the following schedule when hedging its Fixed Price Energy Requirements. The Minimum and Maximum hedge % represent the Fixed Price Energy planned or under contract divided by forecasted load.

<table>
<thead>
<tr>
<th>Quarter</th>
<th>Minimum Hedge %</th>
<th>Maximum Hedge %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prompt Q [PQ]</td>
<td>85%</td>
<td>110%</td>
</tr>
<tr>
<td>PQ + 1</td>
<td>80%</td>
<td>110%</td>
</tr>
<tr>
<td>PQ + 2</td>
<td>74%</td>
<td>110%</td>
</tr>
<tr>
<td>PQ + 3</td>
<td>69%</td>
<td>110%</td>
</tr>
<tr>
<td>PQ + 4</td>
<td>63%</td>
<td>105%</td>
</tr>
<tr>
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<td>58%</td>
<td>99%</td>
</tr>
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<td>52%</td>
<td>93%</td>
</tr>
<tr>
<td>PQ + 7</td>
<td>47%</td>
<td>87%</td>
</tr>
<tr>
<td>PQ + 8</td>
<td>41%</td>
<td>82%</td>
</tr>
<tr>
<td>PQ + 9</td>
<td>36%</td>
<td>76%</td>
</tr>
<tr>
<td>PQ + 10 - 39</td>
<td>30%</td>
<td>70%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Minimum Hedge %</th>
<th>Maximum Hedge %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prompt 1-4 Quarters</td>
<td>85</td>
<td>110</td>
</tr>
<tr>
<td>Balance of prompt year not covered by Prompt 4 Quarters</td>
<td>65</td>
<td>90</td>
</tr>
<tr>
<td>Current Calendar Year (CY) + 2</td>
<td>40</td>
<td>80</td>
</tr>
<tr>
<td>CY+3</td>
<td>30</td>
<td>70</td>
</tr>
<tr>
<td>-------</td>
<td>-----</td>
<td>----</td>
</tr>
<tr>
<td>CY+4</td>
<td>30</td>
<td>70</td>
</tr>
<tr>
<td>CY+5</td>
<td>30</td>
<td>70</td>
</tr>
</tbody>
</table>

The hedge schedule for the Prompt Quarter Energy hedging compliance will be measured as of within 5 days prior to the first day of the each quarter (e.g., on September 27, on a date between September 26th and September 30th, 2019 to 2023, CPA will have hedged 85 to 110 percent of its projected energy requirements during for Q4 2023 to Q3 2020 and 80 to 110 percent of requirements for Q1 2024).

The minimum hedge level will be achieved by implementing a time-driven programmatic strategy. Time-driven programmatic hedges are executed at a predetermined rate pursuant to a time schedule and without regard for market conditions. The purpose of these hedging transactions is to achieve a reduction in variability in power supply costs by gradually increasing the amount of energy hedged as the actual date of consumption approaches. Time-driven strategies avoid the inherent impossibility of trying to consistently and accurately “time the market” to purchase energy at least cost when making hedging decisions. Additionally, a load serving entity the size of CPA needs to spread its procurement efforts over time to effectively manage the potential negative price impacts of procuring a large volume of energy, over a short period of time, in an illiquid market.

Hedging decisions to reach targets between the minimum and maximum hedge levels will be based on price-driven or opportunistic strategies. The purpose of price-driven or opportunistic strategies is to capitalize on market opportunities when conditions are favorable. CPA will base its decision to execute opportunistic hedges on the anticipated impact to projected power supply costs and the resulting reduction in risk.

Opportunistic hedges may be executed when energy price levels are favorable to lowering the cost of power relative to established program goals and financial projections; alternatively, opportunistic hedges can be executed in adverse market conditions relative to financial goals in order to reduce the potential negative impact of continued upward trending commodity prices relative to established goals.

In executing this ERHS, Fixed-Price Energy hedges may be modified, repositioned or unwound for the purpose of maintaining hedge coverage that matches changes in forecast electric load. This includes the ability of the CPA to use liquid market products to hedge average loads over a defined time period and then later modify its hedges to more precisely match load.

### 4.1.2 Renewable Energy

In order to cost-effectively meet its GHG-reduction and renewable energy goals, CPA intends to meet a growing share of its energy supply requirements with renewable energy, a large portion of which will be Product Content Category 1 (PCC1) renewable energy. PCC1 renewable energy is sourced from a renewable generator that is either directly interconnected to the California Independent System Operator (CAISO) or another California Balancing Authority or directly scheduled into CAISO without use of substitute energy. CPA shall diversify its renewable energy portfolio further by incorporating Portfolio Content Category 2 (PCC2) renewable energy purchases. PCC2 renewable energy is sourced from renewable generators located outside the state of California - where that generation is “firmed and shaped” for delivery into California. PCC2 purchases are typically less expensive and shorter in term than
PCC1, so they provide a cost-effective and flexible method of augmenting CPA’s renewable energy purchases to meet renewable portfolio content commitments to customers. However, not all PCC2 renewable energy is emissions-free; therefore, CPA must assess the value of PCC2s against its respective emissions intensity. In addition, RPS compliance rules set minimum requirements for PCC1 and PCC2 as a percentage of the total RPS compliance portfolio, which CPA will abide by in its procurement of both products.

In order to manage price risk of long-term renewable energy, and to allow CPA to prudently and methodically build a portfolio of long-term assets, CPA intends to meet its renewable energy targets with a blend of short and long-term contracts. CPA intends to fully comply with long-term contracting requirements mandated by SB 350; therefore, executed and planned long-term renewable contracts will be reflected in CPA’s renewable energy positions.

CPA shall observe the following schedule while hedging its renewable energy requirements. This hedge schedule shall first be measured within 5 days prior to the first day of each quarter for the Current Calendar Year, and within 5 days prior on December 1, 2020 and then on December 1 of each subsequent of each year for the Prompt Calendar year and the two following calendar years.

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Minimum Hedge %</th>
<th>Maximum Hedge %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Calendar Year</td>
<td>90</td>
<td>110*</td>
</tr>
<tr>
<td>Prompt Calendar Year</td>
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<td>100110*</td>
</tr>
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<tr>
<td>PY + 4 - 9</td>
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<td>9580</td>
</tr>
</tbody>
</table>

* Maximum hedge percentages allow for a planning margin to accommodate volumetric uncertainty associated with electric consumption and generation

4.1.3 Carbon Free Energy

In pursuit of its GHG-reduction objections, CPA shall augment its renewable energy purchases outlined above with energy purchases from carbon-free energy generating facilities, which are typically hydro-electric resources located in California that are too large to qualify as Eligible Renewable Resources (30 MW or greater) or located outside of California. Similar to PCC2 renewable energy contracts, carbon-free energy purchases are typically short-term, most frequently one to three years in length.

CPA may have the opportunity to receive free carbon free allocations from SCE. Hedging activity should consider these allocations and expected allocations should be included in the hedging percentage. CPA will observe the following schedule when hedging its Carbon-Free renewable energy requirements. This hedge schedule shall be measured within 5 days prior to the first day of each quarter for the Current Calendar Year, and within 5 days prior to December 1 of each year for the following ten Calendar Years.

The hedge schedule shall be measured on December 1 of each year for the Prompt Calendar year and the two subsequent calendar years.
<table>
<thead>
<tr>
<th>Time Period</th>
<th>Minimum Hedge %</th>
<th>Maximum Hedge %</th>
</tr>
</thead>
<tbody>
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<td>110*</td>
</tr>
<tr>
<td>Prompt Calendar Year</td>
<td>75</td>
<td>100110*</td>
</tr>
<tr>
<td>PY + 1</td>
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<td>100110</td>
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</tr>
<tr>
<td>PY + 4 - 9</td>
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<td>7550</td>
</tr>
</tbody>
</table>

* Maximum hedge percentages allow for a planning margin to accommodate volumetric uncertainty associated with electric consumption and generation.

In setting the above targets, it is important to note that the purchase of Carbon Free Energy is a voluntary requirement set by the CPA Board to exceed SCE’s GHG emissions goals. In determining the total volume of Carbon Free Energy to be hedged, the CPA Board may elect to increase or reduce the total quantity of Carbon Free Energy included in CPA’s portfolio as it seeks to balance multiple program objectives, including financial goals such as targets for financial reserves and retail rates.

### 4.1.4 Resource Adequacy Capacity

As a Load-Serving Entity (LSE) in California, CPA is required to demonstrate both annually and monthly that it has secured sufficient energy capacity to provide for its share of California’s energy load; this capacity is referred to as Resource Adequacy (RA). Because CPA serves customers in SCE’s service territory, CPA has local RA requirements specific to the Los Angeles Basin and Big Creek/Ventura local areas, as well as general RA requirements for Southern California (“South of Path 26 System”), a portion of which must be Flexible RA. Flexible RA requirements ensure resources are available on the grid to provide ancillary services such as ramping and regulation.

RA is typically transacted via contracts that vary in length from one month to three years, and it is currently bought and sold via a bilateral market, which not only provides cost-effective contracting opportunities but also proves at times to be fragmented and volatile. **While a waiver process exists to excuse LSEs from their RA requirements, it is the goal of CPA to meet all RA requirements, including local, flex, and system products, and not use the RA waiver process.**

CPA will observe the following schedule when hedging its RA requirements. The hedge schedule shall be measured for the system RA product by month that CPA is required to procure **within 5 days prior to** December 1 of each year for the Prompt Calendar year and the **two-nine** subsequent calendar years.

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Minimum Hedge % (applicable to all months)</th>
<th>Maximum Hedge % (applicable to peak month only)³</th>
</tr>
</thead>
<tbody>
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</tr>
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</tr>
<tr>
<td>PY + 4 - 9</td>
<td>2035</td>
<td>80</td>
</tr>
</tbody>
</table>

³ Due to the variable nature of CPA’s monthly RA requirements, non-peak months may exceed the applicable Maximum Hedge %.

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4.1.5 Congestion Revenue Rights (CRRs)

4.1.6

As a CAISO market participant, CPA has congestion risk associated with serving its customer load. CPA manages congestion risks by preferring day ahead scheduling of energy delivered at SP-15, and by resource assessment and selection consistent with this Policy. Once energy is procured, CPA manages congestion risk through the prudent management of CRRs, which are financial instruments used to hedge against transmission congestion costs encountered in the CAISO day-ahead market. The RMT is responsible for overseeing the management of CRRs and CRR trading. The CRR portfolio will be managed by CPA’s Front Office with support from CPA’s Scheduling Coordinator. CRRs are transacted to effectively manage portfolio congestion risk. Trading of CRRs for speculative purposes is not permitted.
5.1 Hedge Program Metrics

The success of the Energy Risk Hedging Strategy will be measured by realizing power supply costs in line with the budgeted power supply costs used to set customer rates, as well as by reducing CPA’s exposure to commodity price risk.

Current projected power supply costs will be compared to budgeted power supply costs where budgeted costs will be based on the assumptions used at the time customer generation rates are set. Current power supply costs shall use all fixed priced contracts executed as of the date of the report. All open positions will be marked to market and compared to the budgeted power supply costs.

The Front and Middle Office will use a variety of industry standard metrics to evaluate open positions and potential hedge transactions. RMT will review these metrics when making price-driven or opportunistic hedging decisions to ensure that the transactions are consistent with the goals of the Energy Risk Hedging Strategy. These metrics will be updated and reported on a monthly basis.

6.1 Reporting Requirements

The following reporting is required to manage the hedge program and to ensure its success:

- Net position report for each product
- Current projected power supply costs compared to budget
- Gross margin at Risk
- GHG intensity
Appendix C: AUTHORIZED TRANSACTION TYPES

All transaction types listed below must be executed within the limits set forth in the ERMP. Definitions for each product are provided in Appendix A.

- **CAISO Market Products**
  - **Day-Ahead Market Energy** (Energy purchased from the CAISO Day-Ahead Market.)
  - **Real-Time Market Energy** (Energy purchased from the CAISO in the Real-Time Market)
  - **Concentration Revenue Rights** (A point-to-point financial instrument in the Day-Ahead Energy Market that entitles the holder to receive compensation for or requires the holder to pay certain congestion related transmission charges that arise when the transmission system is congested.)
  - **Convergence Bids** (Financial positions, either demand or supply, taken in the Day-ahead Market and liquidated in the Real-Time Market.)
  - **Inter-Scheduling Coordinator Trades** (A trade between two Scheduling Coordinators that is a settlement service that CAISO offers to parties of a bilateral contract as a means of offsetting CAISO settlement charges against bilateral contractual payment responsibilities.)

- **Physical Energy Products**
  - **Short-Term Energy** (Energy traded in the CAISO market or bilaterally for a duration less than one year.)
  - **Long-Term Energy** (Energy traded in the CAISO market or bilaterally for a duration greater than one year.)
  - **Physical Over-the-Counter (OTC) Options** (Call options that give the buyer the right, but not the obligation, to buy an underlying power product at agreed upon terms as detailed in a confirmation agreement; or put options that give the seller the right, but not the obligation, to sell an underlying power product at agreed upon terms as detailed in a confirmation letter.)

- **Resource Adequacy Capacity** (A capacity product whereby a Seller commits to a must offer obligation of its generator in the CAISO market and on behalf of a specified Load Serving Entity.)

- **Import Capability Rights** (Entitles an LSE to count Resource Adequacy products at a specified import location toward its Resource Adequacy Requirements.)

- **Physical Environmental Products**
  - **PCC1, PCC2 and PCC3 Renewable Energy** (see definition in Appendix A)\(^4\)
  - **Carbon Free Energy** (see definition in Appendix A)
  - **Air Resource Board Allowances** (An allowance is a tradeable permit issued by the California Air Resource Board to emit one metric ton of a carbon dioxide equivalent greenhouse gas emission.)

- **Financial Hedging Products**
  - **Futures Contracts** (A contract to buy or sell a commodity (electricity) at a predetermined price at a specified time in the future. Futures Contracts are standardized for quality and quantity to facilitate trading on a futures exchange (e.g., Intercontinental Exchange).)

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\(^4\) Clean Power Alliance’s Joint Power’s Agreement discourages the purchase and use of PCC3 products. PCC3 products will only be acquired under exceptional circumstances requiring the use of this product to achieve the agency’s environmental and financial goals.
- **Swaps** (Financial contracts in which one party agrees to pay a cash flow calculated by multiplying a fixed volume by a fixed price (fixed price payer) and the other party agrees to pay a cash flow calculated by multiplying the same fixed volume times a market reference index price (floating price payer). At settlement, the party owing the higher amount pays the net difference. Swaps are transacted in over-the-counter markets.)
- **Call and Put Options** (Call options give the buyer the right, but not the obligation, to purchase energy or other instruments. Put options give the buyer the right, but not the obligation, to sell energy or other instruments.)
- **Options on Swaps (Swaptions)** (call options give the buyer the right, but not the obligation, to enter into a swap transaction as the fixed price payer. A put option gives the buyer the right, but not the obligation, to enter into a swap transaction as the floating priced payer.)

- **Transmission** (The reservation and transmission of capacity and energy between two points on a transmission provider’s system.)
- **Tolling Agreements** (Agreement between a power buyer and a power generator, under which the buyer supplies the fuel, either physically or financially, and receives an amount of power generated based on an assumed conversion rate at an agreed cost.)
Appendix D: NEW TRANSACTION TYPE APPROVAL FORM

New Transaction Type Approval Form

Prepared By:

Date:

New Transaction Type Name:

Business Rationale and Risk Assessment:

- Product description – including the purpose, function, expected impact on net revenues (i.e., increase, manage volatility, control variances, etc.) and/or benefit to CPA
- Identification of the in-house or external expertise that will be relied upon to manage and support the new or non-standard transaction
- Assessment of the transaction’s risks, including any material legal, tax or regulatory issues
- How the exposures to the risks above will be managed by the limit structure
- Proposed valuation methodology (including pricing model, where appropriate)
- Proposed reporting requirements, including any changes to existing procedures and system requirements necessary to support the new product
- Proposed accounting methodology
- Proposed Middle Office work flows/methodology, including systems
- Brief description of the responsibilities of various departments within CPA who will have any manner of contact with the new or non-standard transaction

Reviewed by:

__________________________________________  ________________
Vice President, Power Supply  Date

__________________________________________  ________________
Chief Operating Officer  Date

__________________________________________  ________________
Chief Executive Officer  Date
Appendix E: NOTICE OF CONFLICT OF INTEREST

To: [insert title]

Declaration of Conflict of Interest

I understand that I am obligated to give notice in writing to Clean Power Alliance of any interest or relationship that I may have in any counterparty that seeks to do business with Clean Power Alliance, and to identify any real or potential conflict of interest such counterparty has or may have with regard to any existing or potential contract or transaction with Clean Power Alliance, within 48-hours of becoming aware of the conflict of interest.

I would like to declare the following existing/potential conflict of interest situation arising from the discharge of my duties concerning Clean Power Alliance activities covered by the scope of the ERMP:

   a) Persons/companies with whom/which I have official dealings and/or private interests:

   b) Brief description of my duties which involved the persons/companies mentioned in item a) above.

Position and Name: ________________________________

Signature: ________________________________

Date: ________________________________
Appendix F: CODE OF MARKETING AND TRADING PRACTICES

See next page.
Clean Power Alliance of Southern California
Code of Marketing and Trading Practices
July 12, 2018

Definitions

Marketing and Trading Employee – Any employee, contractor, consultant, or agent of CPA who engages in procurement activity.

Scope of Code
This Code of Marketing and Trading Practices (the “Code”) applies to all CPA Marketing and Trading Employees. Each person subject to this Code is required to read, understand, and abide by the provisions contained in this Code.

Purpose
In addition to demonstrating CPA’s commitment to ethical business practices, this Code is designed to ensure that CPA complies with its obligations under state and federal laws, rules and regulations promulgated by various governmental agencies, and applicable policies adopted by CPA. This Code defines and affirms the values and principles that CPA’s Marketing and Trading Employees must follow in conducting their business activities. The Code is intended to complement the other policies, procedures and processes of CPA and to guide traders and marketers as they negotiate transactions, arrange for transmission, and manage risk.

Compliance with the Code allows CPA to assure its counterparties, potential customers, regulators, and the public that its business activities are, and will continue to be, conducted with integrity and unlawful/unethical trading practices will not be tolerated.

Questions about compliance with industry and company regulations as well as with this Code should be referred to CPA’s General Counsel.

Policy
CPA’s Marketing and Trading Employees shall:

1. Conduct business in good faith and in accordance with all applicable laws, regulations, tariffs and rules.
2. Endeavor to always act in the best interests of CPA’s customers.
3. Not disseminate, cause to be disseminated or facilitate the dissemination of known false or misleading information, or engage in transactions in order to exploit known false or misleading information.
4. Engage only in transactions with legitimate business purposes.
5. Not knowingly arrange or execute wash trades.
6. Not engage in any activity with the intent to alter any market price or otherwise interfere with the normal operation of a well-functioning competitive market.
7. Not engage in price reporting or furnishing transaction prices to any entity that collects prices to be used in the calculation of a price index or for distribution to subscribers, without prior written approval of CPA’s General Counsel.
8. Not collude with other market participants to: (i) affect the price of any commodity; (ii) allocate territories, customers or products; or (iii) otherwise restrain competition.
9. Not engage in transactions for commodities or services without the intention of providing those specific commodities or services.
10. Not reserve service, attempt to reserve service, access information, or attempt to access information from any transmission service provider except through means available to all eligible customers.
11. Successfully complete yearly CPA compliance training.
12. Comply with requirements that trading and marketing activities are recorded and retained.
13. Cooperate with any audit or investigation into trading and marketing activities.

**Duty to Report Violations and Non-Retaliation Clause**

A Marketing and Trading Employee who believes that a violation of the Code has occurred is required to promptly notify CPA’s Chief Operating Officer. CPA shall make every effort to ensure the confidentiality of the reporting Marketing and Trading Employee. If the reporting Marketing and Trading Employee is a CPA employee, CPA shall not discharge, suspend, demote, harass, layoff, deny a promotion, or take any other retaliatory action against that employee solely as a result of the act of reporting a suspected violation of the code. This in no way affects CPA’s rights as an employer with respect to all other issues. CPA will monitor and follow up to ensure that employees who have reported alleged violations have not been subject to retaliation.

**Disciplinary Action**

Any failure to abide by this Code, including the Duty to Report Violations, will result in disciplinary action. All potential violations are handled on a case-by-case basis and will result in a full review by, at minimum, the following individuals: the CPA employee’s immediate supervisor and CPA’s General Counsel. Factors that are considered in setting the disciplinary action plan include but are not limited to: source of violation discovery (self-reported, peer-reported, reported by a third party, via internal procedures, or the result of an audit), intent (accidental or intentional), type and magnitude of risk that the CPA employee exposed CPA to (financial, reputation, etc.), and frequency of the violation (first offense or history of multiple offenses). The disciplinary actions taken may involve demotion, loss of compensation (suspension without pay), and termination of employment.

I have read CPA’s Code of Marketing and Trading Practices, understand its requirements, and agree to abide by its provisions.

Signature __________________________ Printed Name __________________________ Date ________________
# Appendix G: CEO Signing Authority Delegation Form

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<th>Description</th>
<th>Details</th>
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<td>Expiration Date:</td>
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<tr>
<td>Product:</td>
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<tr>
<td>CPA Buys/Sells</td>
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<tr>
<td>Delivery and Maturity Term:</td>
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<tr>
<td>Maximum Volume (per transaction):</td>
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<td>Maximum Price:</td>
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<td>Maximum Notional (cumulative):</td>
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<tr>
<td>CEO and RMT Reporting – specify intended date of report, data to be reported, and frequency (required):</td>
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<td>Other Notes/Guidelines:</td>
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Chief Executive Officer approval signature:
RECOMMENDATION
Adopt Resolution 23-07-053 Approving a Net Billing Tariff (NBT) and amending the Net Energy Metering (NEM) Tariff effective September 1, 2023.

BACKGROUND
On February 7, 2019, the Board of Directors approved a policy governing Net Energy Metering, which was subsequently renamed as CPA’s “NEM Tariff” on March 4, 2021. The NEM Tariff governs operation of CPA’s NEM program and includes the method by which credits are calculated and applied to customer bills for excess electricity generation from customer-sited, behind-the-meter facilities, primarily roof top solar systems. It also governs how “cash-out” payments are administered to customers that generate more electricity and/or retail credits than they use. In March 2019, October 2019, March 2021, and April 2023, the Board approved subsequent amendments to the NEM Tariff that incorporated clarifications and updates.

In December 2022, the California Public Utility Commission (CPUC) issued Decision 22-12-056 adopting a successor to net energy metering tariffs, commonly referred to as NEM 3.0. The decision requires investor-owned utilities (IOUs) to implement an updated “net billing” tariff structure (NBT) designed to optimize grid use by the tariff’s customers and incentivize adoption of combined solar and storage systems in order to help meet California’s climate goals, increase grid reliability, and promote affordability across all
income levels. It directs IOUs to compensate customers with new behind-the-meter renewable generation (e.g., rooftop solar panels, with or without paired battery storage) for their exported energy – energy generated in excess of on-site consumption – based on hourly Avoided Cost Calculator (ACC) values rather than at retail rates as is done under existing NEM tariffs, including CPA’s. The ACC values are intended incentivize adoption of solar paired with battery storage by providing price signals to customers to export energy to the grid when it is most valuable and needed to relieve grid stress.

The CPUC estimates that NEM 3.0 lengthens the expected payback period for rooftop solar to 9 years as compared to an estimated 5 years under NEM 2.0. Most of the reduction in customer value – and the commensurate longer payback time – happens as a result of the new ACC values on the delivery side of customer bills, which is not controlled by CPA. Customers who are already on NEM 1.0 or NEM 2.0 tariffs are not affected by the decision; they will remain on their current NEM tariff through the end of their 20-year legacy period.

Per the CPUC decision, Southern California Edison (SCE) began placing new solar customers on its NBT rate schedule starting April 15, 2023. SCE is required to implement an NBT billing system by mid-December 2023. Until the NBT billing system is operational, SCE will bill NBT customers under the NEM 2.0 tariff.

As a community choice aggregator (CCA) CPA is not required to adopt the NEM 3.0 tariff structure for the generation side of customer bills. As CPA’s rate-setting body, the CPA Board may choose to place new solar customers on its existing NEM Tariff, adopt an NBT tariff that is consistent with the NEM 3.0 decision, or create an alternate NEM or NBT program. In July 2021, the Board identified three key policy goals for CPA’s NEM program going forward: 1) supporting grid reliability; 2) incentivizing storage adoption; and 3) expanding access to solar and storage for low-income customers.

In June 2023 staff presented the CPA Board with analysis of the implications of the NEM 3.0 decision on CPA and its customers and recommendations on CPA’s future NEM policy. The recommendations reflected input received between March and May 2023 from
the Community Advisory Committee (CAC) and CAC NEM working group, the Executive Committee, and the Energy Committee.

**DISCUSSION**

**Current NEM Customers**

CPA has approximately 66,000 customers enrolled in its NEM Tariff. These customers will not be affected by the CPUC NEM 3.0 decision for the duration of their 20-year legacy period. They will remain on the CPA NEM Tariff for their generation charges and credits and on their SCE NEM tariff for delivery charges and credits during that period. The net financial cost to CPA of serving these customers is estimated at $28 million to $36 million per year, including payments to NEM customers for energy exported to the grid, avoided CPA market energy purchases and Resource Adequacy requirements, and avoided customer retail energy purchases. This estimate does not include indirect environmental, grid or customer benefits. The cost will decline slowly over time as customers’ 20-year legacy periods expire.

**NEM Policy Options**

Three options for CPA’s NEM policy going forward were considered:

1. Continue placing new solar customers on the current CPA NEM Tariff, maintaining the NEM 2.0 approach of compensating energy exports at retail rates.
2. Adopt a Net Billing Tariff (NBT) consistent with the CPUC NEM 3.0 decision, compensating energy exports at ACC values.
3. Provide additional incentives for storage and low-income customers through rate design and/or through customer programs. This option could be combined with either Option 1 or 2 above.

Each of these options was evaluated based on their expected impact on customer value and behavior, contribution to CPA policy goals, and financial impact to CPA.

**Option 1: Continue NEM 2.0 for New Solar Customers**

Because the reduction in system payback under NEM 3.0 is concentrated on the delivery side of customer bills, continuing to place new CPA customers NEM 2.0 on the generation
side will do little to offset reduced customer value under NEM 3.0. CPA remaining on NEM 2.0 would also reduce the incentive to adopt storage compared to NEM 3.0, as the NEM 3.0 generation compensation is significantly higher for peak-demand hours. While the benefit to new solar customer of CPA staying on NEM 2.0 would be modest, the cost to CPA compared to NEM 3.0 would be significant, on the order of $15 million to $45 million per year, while only having a marginal impact on CPA’s policy goals and potentially causing customer confusion.

Option 2: Adopt a NEM 3.0 Net Billing Tariff for New Solar Customers
Adopting NEM 3.0 reduces the expected customer value on the generation side of customer bills by a modest amount. However, it significantly increases the incentive for storage adoption through hourly export credits that are highest during periods of peak demand and grid stress. The annual cost to CPA is estimated at $6 million to $17 million depending on multiple factors including customer adoption rates and battery optimization.

Option 3: Additional Incentives for Storage and for Low-Income Customers
Staff evaluated the impact of adopting a rate adder to the ACC value under NEM 3.0 to increase the incentive for storage adoption and/or to increase export compensation for low-income customers. The cost to CPA of a rate adder over time is hard to predict. Cost could be contained by limiting the number of years the adder is offered, capping the adder value, and/or only applying the adder to certain hours (e.g., on-peak hours).

Industry partners have indicated that upfront incentives or rebates are likely to have a significantly higher impact on customer decisions than rate adders. Options for incentive programs include direct rebates, with added incentives and set-asides for low-income customers; discounted direct installation of storage for low-income customers; partnering with storage providers to provide discounts to CPA customers; and on-bill financing repayment for storage.

Recommended Approach
At its June 2023 Board meeting, staff presented its analysis and recommended that the Board adopt the NEM 3.0 approach to export compensation for new solar customers,
combined with a broad-based storage incentive program and a solicitation for proposals in FY 2023/24 targeted at increasing solar plus storage adoption particularly among hard-to-reach customers, such as renters. This approach is consistent with CPA’s policy goals of supporting grid reliability and encouraging storage adoption. It is also consistent with new solar customer offerings in general, which will help simplify customer communications and minimize customer confusion. The Board as well as the Community Advisory Committee, Executive Committee, and Energy Committee supported this approach. The Board directed staff to draft a detailed tariff to present to the Board for approval in July and to present battery incentive program details and other options for under-served customers to the Board prior to the implementation of the new tariff.

PROPOSED NET BILLING TARIFF AND AMENDED NEM TARIFF
The proposed CPA Net Billing Tariff (NBT Tariff) mirrors the CPUC NEM 3.0 decision and the portions of SCE’s proposed Net Billing Tariff that apply to customers’ generation charges and credits, with the following key features:

- Customers’ energy exports (energy exported to the grid, in excess of energy used on-site) will be valued utilizing the same methodology and the same hourly ACC rates as SCE bundled customers.

- Customers who install systems between now and 2027 will be eligible for the same 9-year CPUC-mandated “ACC Plus Adders” as SCE bundled customers, an additional export compensation which will be applied to the delivery portion of customer bills.

- Customers will continue to receive Net Surplus Compensation for total energy exports in excess of total energy imports over the course of a year, and CPA will continue to offer Net Surplus Compensation Rates (NSCR) that are 10% higher than SCE’s NSCR rates.

- Customers who are already receiving service under the CPA NEM Tariff will not be affected by the NBT Tariff for the duration of their 20-year NEM legacy period.

- The NBT Tariff will apply to customers who begin service on SCE’s NBT schedule on or after September 1, 2023. Customers who begin service on SCE’s NBT schedule before September 1, 2023, will be placed on the CPA NEM Tariff for 20
years from their NEM or NBT start date unless they opt to switch to the CPA NBT Tariff.

- Until SCE and CPA NBT billing systems are fully operational, customers on CPA’s NBT Tariff will be billed under the CPA NEM Tariff. These “NBT Transitional Customers” will be switched to billing under the CPA NBT Tariff after their first annual true-up, likely in April 2025.

SCE’s proposed NBT implementation schedule is pending approval by the CPUC. CPA may bring amendments to the CPA NBT Tariff to the Board for approval at a future date in order to align provisions with the finalized and approved SCE NBT schedule and billing implementation process if necessary to ensure a seamless customer experience.

The proposed amendment to the CPA NEM Tariff would bring the NEM Tariff into conformity with the proposed CPA NBT Tariff. Specifically, it would establish that customers who begin service on SCE’s NBT schedule prior to September 1, 2023, are eligible to be served under the CPA NEM Tariff for 20 years from the year of their SCE Permission to Operate (PTO) date.

**FISCAL IMPACTS**

CPA estimates that the annual cost to CPA of the Net Billing Tariff could range from $6 million to $17 million depending on customer adoption rates over time, battery optimization, and market prices. This would be an estimated $9 million to $28 million reduction in CPA annual costs compared to continuing to place new solar customers on the existing CPA NEM Tariff.

**ATTACHMENTS**

1. Resolution No. 23-07-053
   a. Proposed Net Billing Tariff
   b. Revised NEM Tariff (redline)
RESOLUTION NO. 23-07-054

RESOLUTION OF THE BOARD OF DIRECTORS OF CLEAN
POWER ALLIANCE OF SOUTHERN CALIFORNIA
ADOPTING AND APPROVING NET ENERGY METERING
(NEM) 3.0

THE BOARD OF DIRECTORS OF CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA DOES HEREBY FIND, RESOLVE, AND ORDER AS FOLLOWS:

WHEREAS, Clean Power Alliance of Southern California (formerly known as Los Angeles Community Choice Energy Authority) (“Clean Power Alliance” or “CPA”) was formed on June 27, 2017;

WHEREAS, on February 7, 2019, the Board of Directors of CPA (“Board”) first adopted a policy for CPA’s Net Energy Metering (“NEM”) program and this policy was subsequently amended and adopted by the Board on March 7, 2019, October 3, 2019, May 1, 2021,¹ and on April 6, 2023;

WHEREAS, on December 15, 2022, the California Public Utilities Commission issued a decision reducing overall compensation for rooftop solar for new solar customers, increased the economic payback for battery storage, and provided added compensation for low-income customers (“NEM 3.0 Decision”);

WHEREAS, following input from the Community Advisory Committee and its NEM working group, the Executive Committee, and the Energy Resources & Planning Committee, the Board received a presentation at its June 1, 2023 Board meeting on the NEM 3.0 Decision and options that CPA may take in order to respond to the NEM 3.0 Decision. At that meeting, the Board provided a consensus recommendation on the following approach for customers who would otherwise be subject to the NEM 3.0 Decision:

1. CPA to follow the approach in the NEM 3.0 Decision for export compensation; and,
2. Include a broad-based storage rebate program that contains additional low-income incentives to complement the new export compensation values.

(1) and (2) are collectively referred to as “CPA NEM 3.0 Approach”.

WHEREAS, the Board also supported CPA staff working with stakeholders to develop and issue request for proposals (RFPs) in fiscal year (FY) 2023/24 in order to increase solar and storage adoption particularly among hard-to-reach customers, such as renters and other programmatic options to promote energy storage;

¹ On May 1, 2021, the policy was re-named as the NEM Tariff.
WHEREAS, CPA staff has developed a tariff consistent with the CPA NEM 3.0 Approach and amended the current Net Energy Metering Tariff to reflect the CPA NEM 3.0 Approach.

NOW, THEREFORE, BE IT DETERMINED, AFFIRMED, AND ORDERED BY THE BOARD OF DIRECTORS OF THE CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA that effective July 6, 2023:

1. CPA’s Net Billing Tariff attached hereto as Attachment A, is hereby approved;

2. Amendment to CPA’s Net Energy Metering Tariff attached hereto as Attachment B, is hereby approved.

IT IS FURTHER DETERMINED, AFFIRMED, AND ORDERED that any and all acts authorized pursuant to this Resolution and performed prior to the passage of this Resolution are hereby ratified and approved; and,

IT IS HEREBY FURTHER DETERMINED, AFFIRMED, AND ORDERED that this Resolution shall take effect upon its passage, shall be continuing, and shall remain in full force and effect unless and until expressly revoked by further resolution of the Board of Directors.

ADOPTED AND APPROVED this 6th day of July 2023.

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Julian Gold, Chair

ATTEST:

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Gabriela Monzon, Secretary
Net Billing Tariff (NBT)

APPLICABILITY: Clean Power Alliance of Southern California’s (CPA) Net Billing Tariff (“CPA NBT Tariff”) shall be effective on September 1, 2023, and shall apply to (i) CPA customers served under Southern California Edison’s (SCE) Schedule NBT (Net Billing Tariff)\(^1\) (“SCE NBT Schedule”), (ii) CPA customers who are eligible for NEM Tariff and elect to switch the CPA NBT Tariff, and (iii) CPA customers who are automatically transitioned to the SCE NBT Schedule following the termination of their 20-year SCE Net Energy Metering (NEM) legacy period.\(^2\) SCE rate schedules are available at: www.sce.com/regulatory/tariff-books/rates-pricing-choices/other-rates and may be amended or replaced by SCE from time to time. The CPA NBT Tariff may be amended from time to time or replaced by CPA’s Board of Directors (“Board”) at a duly-noticed public meeting of the Board.\(^3\)

CPA customers served under CPA’s NBT Tariff must provide SCE with a completed SCE NBT or SCE NEM Application and comply with all other SCE requirements for enrollment in the SCE NBT Program\(^4\) before being eligible for the CPA NBT Program.

Eligible CPA customers who begin service under the SCE NBT Schedule on or after September 1, 2023 are automatically enrolled in the CPA NBT Tariff either at the time of initially enrolling with CPA or at the time SCE begins serving them on the SCE NBT Schedule. Eligible CPA customers who begin service under the SCE NEM or NBT Schedules prior to September 1, 2023, will be eligible for service under the CPA NEM Tariff (www.cleanpoweralliance.org/nem/) for 20 years following their SCE Original Permission to Operate Notice (PTO) Date.\(^5\) At CPA’s discretion, customers who began service under the SCE NBT Schedule between September 1, 2023 and December 31, 2023 and can document that their NEM or NBT application was submitted to SCE prior to September 1, 2023, may be placed on the CPA NEM Tariff for 20 years following their Original PTO Date.

Customers served under the CPA NEM Tariff may elect to switch to the CPA NBT Tariff. Customers who voluntarily switch to the CPA NBT Tariff or who are automatically transitioned to the CPA NBT Tariff following the termination of their NEM legacy period are not eligible to return to service under the CPA NEM Tariff.

NBT TRANSITION CUSTOMERS: Customers who begin service on the CPA NBT Tariff before CPA and SCE have fully implemented NBT billing systems will be initially served under the CPA NEM Tariff. These customers will be transferred to the CPA NBT Tariff at the end of their CPA

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\(^1\) SCE’s proposed NBT Schedule was submitted to the California Public Utilities Commission in Advice 4961-E and 4961-E-A, available at www.sce.com/regulatory/advice-letters.

\(^2\) See SCE Schedule NEM and Schedule NEM-ST at www.sce.com/regulatory/tariff-books/rates-pricing-choices/other-rates for details on SCE NEM legacy periods.

\(^3\) Board agendas are available at: https://cleanpoweralliance.org/get-involved/agendas-minutes/

\(^4\) See www.sce.com/residential/generating-your-own-power/solar-billing-plan for more information.

\(^5\) CPA’s NEM Schedule is available at: https://cleanpoweralliance.org/wp-content/uploads/2023/05/NEM-Tariff-4-6-23.pdf. Permission to Operate Notice (PTO) is SCE’s written approval authorizing a customer to commence operation of a qualifying renewable electrical generating facility or approving customer’s proposed modifications of the generating facility. The date that SCE provides the customer with the original PTO is referred to as the Original PTO Date. See SCE Schedule NBT for additional information.
NEM Tariff Relevant Period following full implementation of CPA and SCE NBT billing systems but no earlier than April 1, 2025.

**RATES:** All rates for the CPA NBT Tariff are in accordance with the customer’s otherwise applicable CPA rate schedule (CPA OAS). Nothing in this tariff will supersede any SCE authorized charges.

**CHARGES, CREDITS AND BILLING:** CPA’s charges and credits for energy (kilowatt-hours, or kWh) are calculated as described below.

a) **Energy Charges:**

As determined in each billing period, Energy Charges are calculated by multiplying the customer’s energy consumption (electricity imported from the grid, as recorded on the import channel of the customer’s SCE meter) in kWh by the applicable energy rate components ($/kWh) in the customer’s CPA OAS.

b) **Energy Export Credits:**

As determined in each billing period, Energy Export Credits are calculated by multiplying the hourly-differentiated customer’s energy export (electricity exported to the grid, as recorded on the export channel of the customer’s SCE meter) in kWh by the Generation component of the hourly Energy Export Credit Price (EEC Price) derived from the State-approved Avoided Cost Calculator (ACC) value for each hour of the billing period.\(^\text{6}\) Generation EEC Prices will be posted on CPA’s website.\(^\text{7}\) The calculated value of such net energy exports shall be credited to the customer and applied as described in Sections (c) and (d), below.

Energy Export Credits are calculated monthly and can be used to offset Energy Charges (as calculated above) incurred during the billing period but at no point can they offset demand charges, taxes, or other charges or fees within the Customer’s OAS, nor will they offset any SCE charges. Any unused Energy Export Credits can be used to offset Energy Charges within the customer’s Relevant Period as described in Section (d).

For customers with an Original PTO Date between April 15, 2023 and December 31, 2027, EEC Prices are fixed during the first 9 years (the “lock-in period”) beginning on the Original PTO Date so long as the SCE Interconnection Agreement remains valid and under the name of the original customer (or an “Eligible Same Party In” as defined in SCE’s Schedule

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\(^\text{6}\) The EEC Price is a $/kWh value which represents the estimated value of exports to the grid. Each year, the EEC Price is calculated using the California Public Utilities Commission (CPUC) Avoided Cost Calculator (ACC) approved to be effective as of January 1 of the calculation year (the “vintage year”). For each “vintage year”, the EEC Price is calculated for each month of a 9-year horizon period, and it is differentiated by hour (24 hours) and by weekdays and weekend/holidays. In addition, each hourly EEC Price is broken down in two components: (1) the Generation EEC Price (energy, cap and trade and generation capacity) component, and (2) the Delivery Service EEC Price (transmission, distribution, greenhouse adder and methane leakage) component. The current version of the ACC is available at [https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/demand-side-management/energy-efficiency/idsm](https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/demand-side-management/energy-efficiency/idsm).

\(^\text{7}\) [www.cleanpoweralliance.org/nem/](http://www.cleanpoweralliance.org/nem/)
During the “lock-in period”, these customers will have the EEC Prices derived from the ACC adopted by the CPUC to be in effect as of January 1 of the calendar year of the customer’s Original PTO Date. A new customer, other than an Eligible Same Party In, moving into a dwelling with an existing generating facility served under SCE’s NBT Schedule will not be eligible to retain the EEC Prices associated with the Original PTO Date of the generating facility.

For customers with an Original PTO Date after December 31, 2027, and for customers that have exceeded their “lock-in period”, the EEC Prices change each year and are based on the EEC Prices derived from the CPUC ACC adopted by the CPUC to be in effect as of January 1 of the calendar year corresponding to the calculation month.

Residential customers eligible for an ACC Plus Adder as defined under the SCE NBT Schedule will receive the ACC Plus Adder from SCE on the delivery portion of their monthly bills. Enrollment or disenrollment in CPA service does not affect the value of the customer’s ACC Plus Adder credits.

c) Monthly Settlement of CPA Charges/Credits:

Each customer will receive a statement as part of their monthly SCE bill indicating accrued CPA Energy Charges for electric energy imported and/or CPA Energy Export Credits for energy exported during the current monthly billing cycle. When a customer’s CPA credits during the monthly billing cycle result in an accrued credit balance in excess of currently applicable CPA Energy Charges, the value of those credits shall be noted on the customer’s bill and carried over as a bill credit for use in a subsequent billing cycle(s).

A customer who has accrued credits during previous billing cycles will see such credits applied against currently applicable CPA Energy Charges, reducing otherwise applicable Energy Charges by an equivalent amount to such credits. Any remaining credits reflected on the customer’s billing statement shall be carried forward to subsequent billing cycle(s) until either (i) the excess credit is used to satisfy current Energy Charges, (ii) the customer no longer receives service from CPA, or (iii) an annual account true-up is performed.

d) CPA Annual True-Up & Cash-Out Processes:

i) CPA Annual True-Up: During the April monthly billing cycle of each year, CPA will perform a true-up of the most recent twelve (12) monthly billing cycles (the “Relevant Period”) for all active customers with at least 12 months of participation in the CPA NBT Program. If as of April an active customer has less than 12 months of enrollment in the CPA NBT Tariff, their first Annual True-Up will take place during April of the following year and then every 12 months thereafter.

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8 For residential customers an Eligible Same Party In is a legal partner of the Service Account holder on record at the time of the Original POT Date. For non-residential customers, it is the account-holding entity that continues to be majority-controlled by the same underlying individuals or entities from the Original POT Date.

9 ACC Plus Adder is an additional credit for Export Energy to eligible CPA Customers. Qualified low-income customers are eligible for a higher ACC Plus Adder rate. For additional information, see SCE NBT Schedule, available at: https://www.sce.com/regulatory/tariff-books/rates-pricing-choices/other-rates.
a. Net Surplus Energy Adjustment: Net Surplus Energy is defined as any generation that exceeds total customer energy usage during the Relevant Period, as measured in kWh. If the customer’s Net Surplus Energy at the end of the Relevant Period is greater than zero, CPA will calculate an Energy Export Credit Adjustment (in $) equal to the Net Surplus Energy (in kWh) multiplied by the then posted Average Retail Export Compensation Rate (in $/kWh). If the Net Surplus Energy is zero, then the Energy Export Credit Adjustment will be $0.

b. Energy Export Credit Refund: At the time of the Annual True-Up, if the customer has accumulated Energy Export Credits in excess of any currently outstanding Energy Charges, those credits will first be used to offset the Energy Export Credit Adjustment, if any. Any remaining Energy Export Credits will be refunded to the customer up to the total CPA Energy Charges paid by the customer on the same NBT account during the Relevant Period (“Refundable EEC”), consistent with CPA’s Annual Cash-Out practice in Section (d)(ii). Any unused Energy Export Credits shall not be carried forward to the start of a new Relevant Period; rather, the unused Energy Export Credits shall be zeroed out and a new Relevant Period will commence.

c. Net Surplus Compensation (NSC): CPA will determine at the time of Annual True-Up whether each customer has produced Net Surplus Energy over the course of the Relevant Period. If a customer has produced Net Surplus Energy, then CPA shall credit such customer an amount not to exceed $10,000 that is equal to the current Net Surplus Compensation rate per kWh, as defined in CPA Net Surplus Compensation Rate Schedule, multiplied by the quantity of Net Surplus Energy produced by the customer during the Relevant Period, consistent with CPA’s Annual Cash-Out practice in (d)(ii) below. The CPA Net Surplus Compensation Rate Schedule is posted to CPA’s website and updated monthly. CPA Net Surplus Compensation Schedule can be viewed at www.cleanpoweralliance.org/nem/.

d. NSC Renewable Attribute Adder (RAA): CPA will include a Renewable Attribute Adder (RAA) with the NSC rate if the eligible customer or their designee provides a completed and executed Form 14-935 verifying that the Customer has completed all of the following: (i) registered their generating facility at the Western Renewable Energy Generation Information System (WREGIS); (ii) obtained Renewables Portfolio Standard (RPS) ownership certification from the California Energy Commission (CEC) for the Customer’s Net Surplus Energy and provides this certification to CPA; and (iii) transferred ownership of the Renewable Energy Credits (RECs) associated with the Customer’s Net Surplus Energy to CPA.

For details on the CEC and WREGIS certification process, refer to the CEC’s RPS Eligibility Guidebook, which can be found at:

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10 If a customer account has any outstanding balance at the time of Annual True-Up, the customer will have a 30-day grace period to pay in full before their Annual True-Up is performed in order to be eligible for Energy Export Credit refund.
CPA will use the RAA values calculated by SCE using the most recent Western Electricity Coordinating Council (WECC) average renewable premium, based on United States Department of Energy (DOE) published data. The RAA will only be paid to those customers eligible for NSC who provide RECs to CPA.

Value of RECs = Net Surplus kWh \times RAA.

The RAA is updated annually by SCE and is available at:

At the conclusion of each Relevant Period, the eligible customer must notify CPA that the customer has transferred the RECs associated with the Net Surplus Energy in WREGIS by completing Form 14-935 and will send the CEC RPS certificate with the form to CPA.

ii) CPA Annual Cash-Out: During the April monthly billing cycle of each year, any current customer with at least 12 months of enrollment in the CPA NBT Tariff who has a combined Refundable EEC and Net Surplus Compensation value of $100 or more that exceeds any outstanding Energy Charges, will be sent a payment by check via U.S. Mail to the customer’s U.S. mailing address on file at the time of mailing for the credit balance on their account, as determined through CPA’s Annual True-Up process as specified in this section d(i), above. Customers receiving direct payment will have an equivalent amount removed from their NBT account balance at the time of check issuance. In the event that customers do not have a combined Refundable EEC and Net Surplus Compensation value exceeding $100, such credit balance will be carried forward to offset future CPA Energy Charges, unless the customer requests issuance of a check for the credit balance by contacting the CPA Customer Service Center via phone or email. If such a request is received after the customer’s rollover credit has been applied to charges in months following the Annual True-Up, a check will be issued for the remaining credit balance on the account. All NBT accounts will be reset to zero kilowatt-hours annually as of the customer’s May monthly billing cycle and the only NBT credits carried forward on the customer’s account will be the combined Refundable EEC and Net Surplus Compensation credit balances less than $100. Checks will expire 90 calendar days after issuance. If checks expire, the check amount will be returned to a customer’s NBT account as bill credits and will be applied toward future charges.

iii) CPA Cash-Out for Terminations: Customers who close their electric account through SCE, opt-out of CPA and return to bundled service, or move outside of the CPA service area prior to the April monthly billing cycle of each year, shall be trued up according to CPA’s Annual True-Up Process. If applicable, the customer shall receive a refund payment by check via U.S. Mail to the customer’s U.S. mailing address on file at the time of mailing for any Export Energy Credits on their account that exceeds outstanding Energy Charges at the time of true-up, up to the total
amount of Energy Charges paid by the customer during the Relevant Period. If
determined to have produced Net Surplus Energy, the customer shall also receive
a check via U.S. Mail to the customer’s mailing address on file at the time of mailing
for Net Surplus Compensation, up to a maximum of $10,000. Payments are
released 30 days after final billing to allow for any revised usage and/or
adjustments from SCE. Checks will expire 90 calendar days after issuance. If
checks expire or are returned to CPA, customers may request the reissuance of a
check for up to one year after check issuance date and CPA will make a
reasonable effort to reissue the check within 30 days of a customer’s request. After
one year, the funds will be considered unclaimed property and turned over to the
California State Controller’s Office.

e) SCE NBT Program:

Customers are subject to all applicable terms and conditions and billing procedures of
SCE for SCE charges as described in SCE’s NBT Rate Schedule (with the exception of
CPA OAS charges, which are described in CPA’s rate schedules). CPA may amend this
tariff to align with the SCE NBT Schedule following CPUC approval of the SCE NBT
Schedule and any future amendments to the SCE NBT Schedule. CPA calculates and
applies generation charges and credits on a monthly basis. SCE will continue to calculate
and apply charges and credits for delivery, transmission, and other services as detailed in
SCE’s NBT Rate Schedule, and CPA credits cannot be applied to any SCE charges.

Please review the SCE NBT Rate Schedule\(^\text{11}\) for more information.

f) Return to SCE Bundled Service:

CPA customers participating in the CPA NBT Program may opt out and enroll in SCE’s
bundled service, subject to any applicable restrictions imposed by SCE. Customers who
opt out of CPA service are subject to SCE NBT Rate Schedule\(^\text{12}\).

If a CPA customer opts out more than 60 days after their initial enrollment date, CPA will
perform a true-up of their account, as specified in Section (d)(iii), at the time of enrollment
in SCE bundled service.

For details concerning opting out of CPA service, please contact CPA Customer Service
at 888-585-3788 or customerservice@cleanpoweralliance.org.

\(^\text{12}\) https://www.sce.com/regulatory/tariff-books/rates-pricing-choices/other-rates
Net Energy Metering (NEM) Service Tariff

APPLICABILITY: Clean Power Alliance of Southern California’s (CPA) Net Energy Metering Program Tariff (CPA NEM Program Tariff) is available to those CPA customers who meet one of the following conditions:

1. Customer is eligible enrolled under one of the following Southern California Edision’s (SCE) net energy metering program pursuant to the following SCE rate schedules (“SCE NEM Schedules”): (i) Schedule NEM (Net Energy Metering); (ii) Schedule NEM-ST (Net Energy Metering Successor Tariff); (iii) Schedule NEM-V (Virtual Net Energy Metering for Multi-Tenant and Multi-Meter Properties); (iv) Schedule NEM-V-ST (Virtual Net Energy Metering for Multi-Tenant and Multi-Meter Properties Successor Tariff); (v) Schedule MASH-VNM (Multifamily Affordable Solar Housing Virtual Net Metering); (vi) Schedule MASH-VNM-ST (Multifamily Affordable Solar Housing Virtual Net Metering Successor Tariff); (vii) Schedule BG-NEM (Biogas Net Energy Metering); and (viii) Schedule FC-NEM (Fuel Cell Net Energy Metering) (jointly referred to as “SCE NEM Rate Schedules”).

2. Customer begins service on SCE’s Net Billing Tariff (Schedule NBT, or “SCE NBT Rate Schedule”) prior to September 1, 2023.

These SCE NEM and NBT Rate Schedules are available at: https://www.sce.com/regulatory/tariff-books/rates-pricing-choices/other-rates and may be amended or replaced by SCE from time to time. The CPA’s NEM Tariff may be amended or clarified from time to time or replaced by CPA’s Board of Directors (“Board”) at a duly-noticed public meeting of the Board.

Eligible CPA customers who meet the requirements for the SCE NEM Program Schedule will be automatically enrolled in the CPA NEM Program Tariff either at the time of initially enrolling with CPA or at the time SCE accepts them into SCE’s NEM Program.

CPA customers who want to participate in NEM after enrolling with CPA must provide SCE with a completed SCE NEM Application and comply with all other SCE requirements before being eligible for the CPA NEM Program.

Customers who enroll in the SCE NBT Schedule prior to September 1, 2023, will be automatically enrolled in the CPA NEM Tariff. These customers are eligible to continue enrollment in the CPA NEM Tariff for 20 years from the year in which they received permission to operate (PTO) from SCE, provided that they continue to meet the applicable conditions of SCE’s NEM-ST Schedule.

At CPA’s discretion, customers who begin service under the SCE NBT Schedule between September 1, 2023 and December 31, 2023 and can document that their NEM or NBT application was submitted to SCE prior to September 1, 2023, may be placed on the CPA NEM Tariff for 20 years following their original PTO date.

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2 Board agendas are available at: https://cleanpoweralliance.org/get-involved/agendas-minutes/

CPA NEM Tariff – Amended and Approved on March 4, 2021 / Amended on April 6, 2023 / July 7, 2023
Customers enrolled in or eligible for the CPA NEM Tariff may voluntarily elect to be served instead under the CPA Net Billing Tariff (“CPA NBT Tariff”). Customers who voluntarily switch from the CPA NEM Tariff to the CPA NBT Tariff or who are automatically transitioned to the CPA NBT Tariff following the termination of their NEM legacy period are not eligible to return to service under the CPA NEM Tariff.

**RATES:** All rates for the CPA NEM Program will be in accordance with the customer’s otherwise applicable CPA rate schedule (CPA OAS). Nothing in this tariff will supersede any SCE authorized charges.

**CHARGES & BILLING:** CPA’s charges for energy (kWh) will be calculated at the CPA OAS and billed on the net metered usage, as described below.

a) **For a customer with Non-Time of Use (TOU) Rates:**

   If the customer is a “Net Consumer,” having overall positive usage during a specific monthly billing cycle, the customer will be billed in accordance with the customer’s CPA OAS.

   If the customer is a “Net Generator,” having overall negative usage during a specific monthly billing cycle, any net energy production shall be valued at the applicable rate as set forth in the customer’s CPA OAS. The calculated value of any net energy production shall be credited to the customer according to the CPA OAS and applied as described in Sections (c) and (d).

b) **For a customer with TOU Rates:**

   If the customer is a Net Consumer during any discrete TOU period reflected within a specific monthly billing cycle, the net kWh consumed during such TOU period shall be billed in accordance with applicable TOU period-specific rates or charges as specified in the customer’s OAS.

   If the customer is a Net Generator during any discrete TOU period reflected within a specific monthly billing cycle, any net energy production shall be valued at the applicable TOU period-specific rates or charges as specified in the customer’s CPA OAS. The calculated value of such net energy production shall be credited to the customer according to the CPA OAS and applied as described in Sections (c) and (d).

c) **Monthly Settlement of CPA Charges/Credits:**

   Each customer will receive a statement as part of its monthly SCE bill indicating any accrued charges for electric energy usage during the current monthly billing cycle. When a customer’s net energy production results in an accrued credit balance in excess of currently applicable charges, the value of any net energy production during the monthly billing cycle (in excess of currently applicable charges) shall be valued at the CPA OAS

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3 Information about the CPA NBT Program is available at www.cleanpoweralliance.org/nem/.

4 Only applicable to grandfathered SCE NEM 1.0 customers. Please visit www.sce.com/residential/generating-your-own-power/net-energy-metering for more information.
and noted on the customer’s bill, including the quantity of any surplus NEM production (measured in kWh), and carried over as a bill credit for use in a subsequent billing cycle(s).

A customer who has accrued credits during previous billing cycles will see such credits applied against currently applicable charges, reducing otherwise applicable charges by an equivalent amount to such credits. Any remaining credits reflected on the customer’s billing statement shall be carried forward to subsequent billing cycle(s) until either the excess the credit is used to satisfy current charges, the customer no longer receives service from CPA or an annual account true-up is performed.

d) CPA Annual True-Up & Cash-Out Processes:

i) CPA Annual True-Up: During the April monthly billing cycle of each year, CPA will perform a true-up of the most recent twelve (12) month billing cycle, or the period of time from the customer’s commencement of participation in the CPA NEM Program up to the following April (the “Relevant Period”).

For customers who enrolled in the CPA NEM Program prior to May 1, 2019, CPA will perform the first Annual True-Up in April 2020. Commencing in April 2021, CPA will perform the Annual True Up each April for the 12-month period between April to March for all active NEM customers with at least 12 months of participation in the CPA NEM program.

a. NEM Generation Credit Refund: At the time of the Annual True-Up, if the customer has accumulated any NEM generation credits in excess of any currently outstanding charges, those NEM generation credits will be refunded to the customer up to the total CPA charges paid by the customer on the same NEM account during the Relevant Period, consistent with CPA’s Annual Cash-Out practice in (ii).  

b. Net Surplus Compensation: Net Surplus Energy is defined as any generation that exceeds total customer energy usage during the Relevant Period, as measured in kWh. CPA will also determine at the time of Annual True-Up whether each customer has produced Net Surplus Energy over the course of the Relevant Period. If a customer has produced Net Surplus Energy, then CPA shall credit such customer an amount not to exceed $10,000 that is equal to the current Net Surplus Compensation rate per kWh, as defined in CPA Net Surplus Compensation Rate Schedule, multiplied by the quantity of Net Surplus Energy produced by the customer during the Relevant Period, consistent with CPA’s Annual Cash-Out practice in (ii) below. The CPA Net Surplus Compensation Rate Schedule will be posted to CPA’s website and updated monthly. CPA Net Surplus Compensation Schedule can be viewed at https://cleanpoweralliance.org/wp-content/uploads/2019/01/CPA-NSCR.pdf.

ii) CPA Annual Cash-Out: During the April monthly billing cycle of each year, any current customer who has a combined NEM generation credit and Net Surplus

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5 If the Customer Account has any outstanding balance at the time of Annual True-Up, the customer will have a 30-day grace period to pay in full before their Annual True-Up is performed in order to be eligible for NEM Generation Credit refund.
Compensation value of $100 or more, as determined during the Annual True-Up process, that exceeds any outstanding charges, will be sent a payment by check via U.S. Mail to the customer’s U.S. mailing address on file at the time of mailing for the credit balance on their account, as determined through CPA’s Annual True-Up process (i). Customers receiving direct payment will have an equivalent amount removed from their NEM account balance at the time of check issuance. In the event that customers do not have a combined NEM generation credit and Net Surplus Compensation value exceeding $100, such credit balance will be carried forward to offset future CPA charges, unless the customer requests issuance of a check for the credit balance by contacting the CPA Customer Service Center via phone or email. If such a request is received after the customer’s rollover credit has been applied to charges in months following the annual true up, a check will be issued for the remaining credit balance on the account. All NEM accounts will be reset to zero kilowatt hours annually as of the customer’s May monthly billing cycle and the only NEM credits that will be carried forward on the customer’s account will be the combined NEM generation credit and Net Surplus Compensation credit balances less than $100. Checks will expire 90 calendar days after issuance. If checks expire, check amount will be returned to a customer’s NEM account as bill credits and will be applied toward future charges.

iii) CPA Cash-Out for Terminations: Customers, who close their electric account through SCE, opt-out of CPA and return to bundled service, or move outside of the CPA service area prior to the April monthly billing cycle of each year, shall be trued up according to CPA’s Annual True-Up Process. If applicable, the customer shall receive a refund payment by check via U.S. Mail to the customer’s U.S. mailing address on file at the time of mailing for any NEM generation credit on their account that exceeds outstanding charges at the time of true-up, up to the amount paid by the customer during the Relevant Period. If determined to have produced Net Surplus Energy, the customer shall also receive a check via U.S. Mail to the customer’s mailing address on file at the time of mailing for Net Surplus Compensation, up to a maximum of $10,000. Payments will be released 30 days after final billing to allow for any revised usage and/or adjustments from SCE. Checks will expire 90 calendar days after issuance. If checks expire or are returned to CPA, customers may request the reissuance of a check for up to one year after check issuance date and CPA will make a reasonable effort to reissue the check within 30 days of a customer’s request. After one year, the funds will be considered unclaimed property and turned over to the California State Controller’s Office.

e) SCE NEM Program:

Customers are subject to applicable terms and conditions and billing procedures of SCE for SCE charges as described in SCE NEM Rate Schedules (with the exception of generation-related charges, which are described in CPA’s rate schedules). Customers should be aware that while CPA settles balances for generation on a monthly basis, SCE will continue to calculate charges for delivery, transmission and other services annually for those customers with an annual billing option, and CPA NEM credits cannot be applied to any SCE charges.
Customers are encouraged to review SCE NEM Rate Schedules at https://www.sce.com/regulatory/tariff-books/rates-pricing-choices/other-rates.

f) **Return to Enrollment in SCE Bundled Service:**

CPA customers participating in the CPA NEM Program may opt out and return to enroll in SCE's bundled service, subject to any applicable restrictions imposed by SCE. If a CPA customer opts out more than 60 days after their initial enrollment date, CPA will perform a true-up of their account, as specified in section (d)(iii), at the time of return to enroll in SCE bundled service. For details concerning opting out of CPA service, please contact CPA Customer Service at 888-585-3788 or customerservice@cleanpoweralliance.org
RECOMMENDATION
Approve and authorize the Chief Executive Officer to execute an amendment to the professional service agreement (PSA) with Pastilla, Inc. for FY2023/24 for a Not to Exceed (NTE) amount of $392,076 for website development and market research.

The amendment for the final year of the three-year contract with Pastilla, Inc. will support program marketing and communications needs aligned with the growth of CPA programs and member agencies.

BACKGROUND
For the past two years, CPA has been receiving support from communications consultant Pastilla, Inc. for website development and market research under a three-year contract that was competitively solicited and subsequently approved by the Board in June 2021. Contracts with two other communications firms, Celtis Ventures and Fraser Communications, were also approved at that time.

CPA is seeking a contract amendment for FY 2023/24, the final year of the contract, to increase the amount of support Pastilla, Inc. will provide in the areas of website and market research. The requested amendment does not alter the scope of the duties
outlined in the contract but provides for increased support in the specified scope due to
the growth of CPA, particularly in the area of customer programs.

At the time of Board approval of the three-year contract, the support needed each year
was not defined in the PSA and it was difficult to predict years in advance how much
support would be needed from Pastilla in the final year of the contract. Without an
amendment, the current NTE of $190,000 would not fully fund the needed support. In
addition, Celtis Ventures no longer is under contract to CPA and the NTE of the third year
of the Fraser Communications contract was reduced by $83,297, or 14%, reflecting CPA’s
overall progress towards insourcing more of its communication and marketing activities.

DISCUSSION
As CPA continues to grow its customer programs portfolio and add new communities, the
need for digital marketing support, improved web presence, and customer research expands.

During the next fiscal year, CPA will:

- Implement the Power Ready Program to support community power resiliency
- Launch a new Local Government Program to support 35 member agencies,
  including an interactive web portal to support member agency information needs
  aligned with this program
- Welcome three new members agencies and begin service in their communities
- Support default changes for three member agencies and their communities
- Continue to upgrade website functionality to improve the user experience when
  featuring more robust content and interactive elements
- Continue market research efforts focusing on the needs of high-value commercial
  customers and hard-to-reach customers in disadvantaged communities

The contract with Pastilla has been renewed, per the terms of the contract, under the
current NTE of $190,000¹. Staff is seeking a revised NTE of $392,076 for the remainder

¹ The term begins on June 1.
of the final term so that Pastilla can provide CPA with the increased support necessary to successfully market and implement these activities via CPA’s website while continuing to engage in highly focused research activities.

FISCAL IMPACT
Funds for the proposed contract amendment are included in the Board-approved FY2023/24 Budget.

ATTACHMENT
1. Amended PSA with Pastilla, Inc (Redline)
This Professional Services Agreement (this “Agreement”), dated and effective as of June 3, 2021 (the “Effective Date”), is made by and between:

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA (“CPA”), and

PASTILLA INC. (“Contractor”).

CPA and Contractor are sometimes collectively referred to herein as the “Parties” and each individually as a “Party.” In consideration of the terms of this Agreement, and for other good and valuable consideration, the Parties make the following acknowledgments and agreements:

RECITALS

WHEREAS, CPA may contract with a provider for digital strategy, back-end technology development, maintenance support for digital platforms such as the website, potential customer app, or other technology platform

WHEREAS, CPA conducted a Request for Proposal (“RFP”) and CPA selected Contractor because Contractor has the expertise and experience to provide the specified services to CPA and offered CPA the Best Value;

WHEREAS, Contractor desires to provide these specified services to CPA;

WHEREAS, the purpose of this Agreement is to set forth the terms and conditions upon which Contractor shall provide services to the CPA;

NOW, THEREFORE, it is agreed based on the consideration set forth below by the Parties to this Agreement as follows:

AGREEMENT

1. Definitions

a. The definition of “Confidential Information” is set forth in paragraph 10.b. of this Agreement.

b. “CPA Data” shall mean all data gathered or created by Contractor in the performance of the Services pursuant to this Agreement, including any customer or customer-related data.

c. “CPA Information” shall mean all confidential, proprietary, or sensitive information provided by CPA to Contractor in connection with this Agreement.

d. “CPA Materials” shall mean all finished or unfinished content, writing and design of materials but not limited to messaging, design, personalization, or other materials, reports, plans, studies, documents and other writings prepared by Contractor, its officers, employees and agents for CPA for the performance of, the purpose of, or in the course of implementing this Agreement.

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Agenda Page 92
e. “CPA Product” includes collectively CPA Data, CPA Information, and CPA Materials.

f. “Services” shall mean the scope of work Contractor provides to CPA as specified in Exhibit A.

2. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A – Scope of Work
Exhibit B – RESERVED
Exhibit C – Compensation
Exhibit D – RESERVED

Should a conflict arise between language in the body of this Agreement and any exhibit or attachment to this Agreement, the language in the body of this Agreement controls, followed by Exhibit A, B, C, and D in that order.

3. Services to be Performed by Contractor

In consideration of the payments set forth in this Agreement and in Exhibit C, Contractor shall perform services for CPA in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibits A and B (“Services”).

4. Compensation

CPA agrees to compensate Contractor as specified in Exhibit C:

a. In consideration of the Services provided by Contractor in accordance with all terms, conditions and specifications set forth in this Agreement and Exhibit A, CPA shall make payment to Contractor based on the time and material rates with a not-to-exceed amount and in the manner specified in Exhibit C.

b. Unless otherwise indicated in Exhibit C, Contractor shall invoice CPA monthly to accountspayable@cleanpoweralliance.org for all compensation related to Services performed during the previous month. Payments shall be due within fifteen (15) calendar days after the date the invoice is submitted to CPA at the specified email address. All payments must be made in U.S. dollars.

5. Term

Subject to compliance with all terms and conditions of this Agreement, the term of this Agreement shall be one (1) year from the Effective Date (“Initial Term”). At the end of the Initial Term, the Parties may renew this Agreement for successive one (1) year terms for a maximum of two years (each, a “Renewal Term”), unless either Party provides ninety (90) days prior written notice of its intent not to renew the term of the Agreement (“Renewal Notice”).
6. Termination

a. Termination for Convenience. CPA may terminate the Agreement in accordance with this paragraph in whole, or from time to time in part, whenever CPA determines that termination is in CPA's best interests. A termination for convenience, in part or in whole, shall take effect by CPA delivering to Contractor, at least thirty (30) calendar days prior to the effective date of the termination or prior to a Notice of Termination specifying the extent to which performance of the Services under the Agreement is terminated.

If the termination for convenience is partial, Contractor may submit to CPA a request in writing for equitable adjustment of price or prices specified in the Agreement relating to the portion of this Agreement which is not terminated. CPA may, but shall not be required to, agree on any such equitable adjustment. Nothing contained herein shall limit the right of CPA and Contractor to agree upon amount or amounts to be paid to Contractor for completing the continued portion of the Agreement when the Agreement does not contain an established price for the continued portion. Nothing contained herein shall limit CPA's rights and remedies at law.

b. Termination for Default. If Contractor fails to provide in any manner the Services required under this Agreement, otherwise fails to comply with the terms of this Agreement, or violates any ordinance, regulation or law which applies to its performance herein and such default continues uncured for thirty (30) calendar days after written notice is given to Contractor, CPA may terminate this Agreement by giving five (5) business days' written notice. If Contractor requires more than thirty (30) calendar days to cure, then CPA may, at its sole discretion, authorize additional time as may reasonably be required to effect such cure provided that Contractor diligently and continuously pursues such cure.

c. Termination for Lack of Third-Party Funding. CPA may terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.

d. Effect of Termination. Upon the effective date of expiration or termination of this Agreement: (i) Contractor may immediately cease providing Services in its entirety or if a termination to a part of the Agreement, case providing the Services that have been terminated; (ii) any and all payment obligations of CPA under this Agreement will become due immediately except any equitable adjustment pursuant to paragraph 6(a); (iii) promptly transfer title and deliver to CPA all CPA Product or any work in progress pursuant to this Agreement; and (iv) each Party will promptly either return or destroy (as directed by the other Party) all Confidential Information of the other Party in its possession as well as any other materials or information of the other Party in its possession.

Upon such expiration or termination, and upon request of CPA, Contractor shall reasonably cooperate with CPA to ensure a prompt and efficient transfer of all data, documents and other materials to CPA in a manner such as to minimize the impact of expiration or termination on CPA's customers.
7. **Contract Materials**

CPA owns all right, title and interest in and to all CPA Materials and CPA Data. Upon the expiration of this Agreement, or in the event of termination, CPA Materials and all CPA Information, in whatever form and in any state of completion, shall remain the property of CPA and shall be promptly returned to CPA. Upon termination, Contractor may make and retain a copy of such Contract Materials if required by law or pursuant to the Contractor’s reasonable document retention or destruction policies.

8. **Payments of Permits/Licenses**

Contractor bears responsibility to obtain any license, permit, or approval required for it to provide the Services to be performed under this Agreement at Contractor’s own expense prior to commencement of the Services.

9. **No Recourse against Constituent Members**

CPA is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members. CPA shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Contractor shall have no rights and shall not make any claims, take any actions or assert any remedies against any of CPA’s constituent members in connection with this Agreement.

10. **Confidential Information.**

   a. **Duty to Maintain Confidentiality.** Contractor agrees that Contractor will hold all Confidential Information in confidence, and will not divulge, disclose, or directly or indirectly use, copy, digest, or summarize, any Confidential Information unless necessary to comply with any applicable law, regulation, or in connection with any court or regulatory proceeding applicable in which case, any disclosure shall be subject to this paragraph 10.c. and d., below.

   b. **Definition of “Confidential Information.”** The following constitutes “Confidential Information,” whether oral or written: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, (b) information, in whatever form, that CPA shares with Contractor in the course and scope of this Agreement, or (c) information that either Contractor stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other.

   Confidential Information shall not include: (I) information that is generally available to the public or in the public domain at the time of disclosure; (2) information that becomes publicly known other than through any breach of this Agreement by Contractor or its Representatives; (3) information which is subsequently lawfully and in good faith obtained by Contractor or its Representatives from a third party, as shown by documentation sufficient to establish the third party as the source of the Confidential Information; provided that the disclosure of such information by such third party is not known by Contractor or its Representatives to be in breach of a confidentiality agreement or other similar obligation of confidentiality; (4) information that Contractor or its Representatives develop independently without
use of or reference to Confidential Information provided by Contractor; or (5) information that is approved for release in writing by Contractor.

c. **California Public Records Act.** The Parties acknowledge and agree that the Agreement including but not limited to any communication or information exchanged between the Parties, any deliverable, or work product are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word “Confidential.” The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as “Confidential” that clearly contain information that is not Confidential Information.

d. **Third Party Request for Confidential Information.** Upon request or demand of any third person or entity not a Party hereto pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“Requested Confidential Information”), CPA will as soon as practical notify Contractor in writing via email that such request has been made. CPA will be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release to the third party of the Confidential Information designated by Contractor. If Contractor takes no such action after receiving the foregoing notice from CPA, CPA shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Contractor does take or attempt to take such action, Contractor agrees to indemnify and hold harmless CPA, its officers, directors, employees and agents (“CPA Indemnified Parties”), from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against any of CPA Indemnified Parties for Contractor’s attempt to prevent disclosure or CPA’s refusal to disclose any Confidential Information.

11. **Insurance**

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to CPA within 10 business days after the Agreement is fully executed. The general liability policy shall be endorsed naming Clean Power Alliance of Southern California and its employees, officers and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to CPA prior to commencement of work and maintained throughout the Term and any Renewal Term. Each certificate shall provide for thirty (30) days advance written notice to CPA of any cancellation or reduction in coverage. Said policies shall remain in force through the life of this Agreement and shall be payable on a per occurrence basis only, except those required by paragraph (d) below which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing herein shall be construed as a limitation on Contractor’s obligation under paragraph 12 of this Agreement to indemnify, defend, and hold CPA harmless from any and all liabilities arising from the Contractor’s negligence, recklessness or willful misconduct in the performance of this Agreement. CPA agrees to timely notify the Contractor of any negligence claim.
Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the Agreement. In addition to any other available remedies, CPA may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

a. **General Liability**

The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million ($1,000,000.00) with a two million dollar ($2,000,000.00) aggregate limit. CPA shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page.

b. **Auto Liability**

Where the services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit ($1,000,000.00).

c. **Workers' Compensation**

The Contractor acknowledges the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to CPA prior to commencement of work.

d. **Professional Liability Insurance**

Coverages required by this paragraph may be provided on a claims-made basis with a “Retroactive Date” either prior to the date of the Agreement or the beginning of the contract work. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond completion of contract work. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a “retroactive date” prior to the Agreement effective date, the Contractor must purchase “extended reporting” coverage for a minimum of twelve (12) months after completion of contract work. Contractor shall maintain a policy limit of not less than $1,000,000.00 per incident. If the deductible or self-insured retention amount exceeds $100,000.00, CPA may ask for evidence that Contractor has segregated amounts in a special insurance reserve fund or Contractor’s general insurance reserves are adequate to provide the necessary coverage and CPA may conclusively rely thereon.

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement. Contractor shall monitor the safety of the job site(s) during the project to comply with all applicable federal, state, and local laws, and to follow safe work practices.
12. Indemnification

Contractor agrees to indemnify, defend, and hold harmless CPA, its employees, officers, and agents, from and against, and shall assume full responsibility for payment of all wages, state or federal payroll, social security, income or self-employment taxes, with respect to Contractor’s performance of this Agreement. Contractor further agrees to indemnify, and hold harmless CPA from and against any and all third-party claims, liabilities, penalties, forfeitures, suits, costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney’s fees), which CPA may hereafter incur, become responsible for, or pay out, as a result of death or bodily injuries to any person, destruction or physical damage to tangible property, or any violation of governmental laws, regulations or orders, to the extent caused by Contractor’s negligent acts, errors or omissions, or the negligent acts, errors or omissions of Contractor’s employees, agents, or subcontractors while in the performance of the terms and conditions of the Agreement, except for such loss or damage arising from the sole negligence or willful misconduct of CPA, elected and appointed officers, employees, agents and volunteers.

13. Independent Contractor

a. Contractor acknowledges that Contractor, its officers, employees, or agents will not be deemed to be an employee of CPA for any purpose whatsoever, including, but not limited to: (i) eligibility for inclusion in any retirement or pension plan that may be provided to employees of Contractor; (ii) sick pay; (iii) paid non-working holidays; (iv) paid vacations or personal leave days; (v) participation in any plan or program offering life, accident, or health insurance for employees of Contractor; (vi) participation in any medical reimbursement plan; or (vii) any other fringe benefit plan that may be provided for employees of Contractor.

b. Contractor declares that Contractor will comply with all federal, state, and local laws regarding registrations, authorizations, reports, business permits, and licenses that may be required to carry out the work to be performed under this Agreement. Contractor agrees to provide CPA with copies of any registrations or filings made in connection with the work to be performed under this Agreement.

14. Compliance with Applicable Laws

The Contractor shall comply with any and all applicable federal, state and local laws and resolutions affecting Services covered by this Agreement.

15. Nondiscriminatory Employment

Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age, protected veteran status, or condition of disability. Contractor and/or any permitted subcontractor understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all federal, state and local statutes, regulations and ordinances.


All finished and unfinished reports, plans, studies, documents and other writings prepared by
and for Contractor, its officers, employees and agents in the course of implementing this Agreement shall become the sole property of CPA upon payment to Contractor for such work. CPA shall have the exclusive right to use such materials in its sole discretion without further compensation to Contractor or to any other party. Contractor shall, at CPA's expense, provide such reports, plans, studies, documents and writings to CPA or any party CPA may designate, upon written request. Contractor may keep file reference copies of all documents prepared for CPA.

17. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of CPA, to:

Name/Title: Theodore Bardacke, Executive Director
Address: 801 S. Grand Ave., Suite 400
         Los Angeles, CA 90017
Telephone: (213) 269-5890
Email: tbardacke@cleanpoweralliance.org

With a copy, which shall not serve as notice as required or specified herein, to:

Name/Title: CONTRACTING
Address: 801 S. Grand Ave., Suite 400
         Los Angeles, CA 90017
Telephone: (213) 269-5890
Email: contracting@cleanpoweralliance.org

In the case of Contractor, to:

Name/Title: Rudy Manning/President
Address: 530 S. Lake Ave Pasadena, CA 91101
Telephone: (626) 415 4480
Email: rudy@pastilla.co

18. Assignment

Neither this Agreement nor any of the Parties' rights or obligations hereunder may be transferred or assigned without the prior written consent of the other Party. Subject to the preceding sentence, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

19. Subcontracting

Contractor may not subcontract Services to be performed under this Agreement without the
prior written consent of CPA. If the CPA’s written consent to a subcontract is not obtained, Contractor acknowledges and agrees that CPA will not be responsible for any fees or expenses claimed by such subcontractor.

20. Retention of Records and Audit Provision

Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees’ time sheets, and correspondence pertaining to this Agreement. Such records shall include, but not be limited to, documents supporting all income and all expenditures. CPA shall have the right, during regular business hours, to review and audit all records relating to this Agreement during the Agreement period and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor’s premises or, at CPA’s option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from CPA. Contractor shall refund any monies erroneously charged. Contractor shall have an opportunity to review and respond to or refute any report or summary of audit findings and shall promptly refund any overpayments made by CPA based on undisputed audit findings.

21. Conflict of Interest

a. No CPA employee whose position with the CPA enables such employee to influence the award of this Agreement or any competing Agreement, and no spouse or economic dependent of such employee, shall be employed in any capacity by the contractor or have any other direct or indirect financial interest in this Agreement. No officer or employee of the Contractor who may financially benefit from the performance of work hereunder shall in any way participate in the CPA’s approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence the CPA’s approval or ongoing evaluation of such work.

b. The Contractor shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Agreement. The Contractor warrants that it is not now aware of any facts that create a conflict of interest. If the Contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to CPA. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this paragraph shall be a material breach of this Agreement.

22. Publicity

Contractor shall not issue a press release or any public statement regarding the Agreement, Services contemplated by this Agreement, or any other related transaction unless CPA has agreed in writing the contents of any such public statement.

23. Governing Law, Jurisdiction, and Venue

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. The Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement and further agrees and
consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles.

24. Amendments

None of the terms and conditions of this Agreement may be changed, waived, modified or varied in any manner whatsoever unless in writing duly signed by the Parties.

25. Severability

Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this Agreement, but rather, the remainder of the Agreement which can be given effect without the invalid provisions, will continue in full force and effect and will in no way be impaired or invalidated.

26. Complete Agreement

This Agreement constitutes the entire Agreement between the parties. No modification or amendment shall be valid unless made in writing and signed by each party. Failure of either party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

27. Counterparts

This Agreement may be executed in one or more counterparts, including facsimile(s), emails, or electronic signatures, each of which shall be deemed an original and all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

Pastilla Inc. Clean Power Alliance of Southern California

By: By: Theodore Bardacke
Title: Executive Director
Exhibit A – Scope of Work

PROJECT TASKS AND DELIVERABLES

Task #1: Digital Strategy: Website

Contractor will develop an overarching digital strategy addressing CPA’s productive use of website based on target audiences. Through the use of quarterly key performance indicators (KPIs) and benchmarks, Contractor will make recommendations on optimizations on all digital platforms.

Deliverables for Task #1:
   a. Overarching digital strategy addressing the agency’s productive use of a website. The initial strategy is due by September 1, 2021, and Contractor shall refresh such strategy at least on a monthly basis, if not sooner as appropriate based on need.
   b. Establish quarterly KPIs and benchmarks.
   c. Event Tracking on a quarterly basis.

Task #2: Market Research

Contractor will implement, as directed by CPA, a comprehensive annual market research program to measure CPA’s brand awareness, customer attitudes and perceptions and the effectiveness of CPA digital campaigns.

Deliverables for Task #2:
   a. Conduct primary and secondary research twice a calendar year.
   b. Conduct annual focus groups. The activities for annual focus groups shall include the following:
      • Hold key group discussions with 75-150 individuals, including virtual sessions, as appropriate.
      • Develop questionnaire to be shared with key stakeholders, as directed by CPA, as follow-up.
      • Hold discussions with key stakeholder, including phone calls, as appropriate.
      • Design qualitative and quantitative-based questionnaire for actionable insights & digital experience creation
   c. Conduct digital testing, including but not limited to site map or card sorting by September 2021 and on an ongoing basis in conjunction with Task#3 Deliverable (b), at least on a quarterly basis if not sooner as appropriate based on need.
   d. Evaluate user experience by August 1 of each calendar year.

Task #3: Website Development and Maintenance

Contractor will perform back-end development and maintenance services for website and other digital platforms as they come online.
Deliverables for Task #3:

a. Implement back-end website redesign, as well as any other back-end website modifications required during the contract year.
b. Develop and maintain site map, wireframes, and components to support the new website by August 1, 2021 and on an ongoing basis, as directed or revised by CPA from time to time; This work will be done in conjunction with Task#2 deliverable (c).
c. Conduct an audit of back-end website security and health by June 15, 2021 and on the fifteenth day of every month during the Initial Term or Renewal Term, or as directed or revised by CPA from time to time.
d. Support day-to-day back-end maintenance and development of the website, including the following:
   • Conduct daily backups.
   • Update software and implement patches and continue to provide such updates or patches proactively.
   • Provide up to 20 hours per month developer support for submitted tickets, including:
     • Bug fixes.
     • Any enhancements made to the website by CPA provided that the total does not exceed the 20 hour per month allotment as specified above and Contractor completes requested enhancement within a commercially reasonable time. Any services requested by CPA that exceed the 20-hour month allotment will be subject to, at a minimum, a separate not-to-exceed amount which the parties will agree to in writing.
   • Use best effort to resolve outstanding problems, provide daily updates for critical site issues, and provide weekly but no less than once every two weeks reporting for product backlog items.
   • Provide access to JIRA ticketing system for real-time status reporting and updates.
e. Make recommendations to ensure CPA has a secure and high-functioning website.

Task #4: Website Design

Contractor will implement the new brand for the redesigned website.

Deliverables for Task #4:

a. Develop style guide for the new website that will be provided to CPA staff for future use.
b. Implement new design on all current pages.
c. Implement new design on new pages as identified in the re-architecture.

Task #5: Website Copywriting Support

Contractor will provide website copywriting support for redesigned website.

Deliverables for Task #5:

a. Draft search-engine optimized copy for all webpages, existing and new pages created through the web re-architecture.
b. All text shall be search engine optimized, accurate and consistent with the tone and voice outlined in the CPA brand style guide.
Exhibit B – RESERVED
Exhibit C – Compensation

During the Initial Term and any Renewal Term of the Agreement, CPA shall pay Contractor, at the following hourly rates, to the personnel listed below:

<table>
<thead>
<tr>
<th>Name</th>
<th>Hourly Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Creative Director, Digital Marketing Strategist, Social Media Strategist, Technology Lead, Market Research Manager</td>
<td>$225</td>
</tr>
<tr>
<td>Sr. Graphic Designer, Art Director, Developers, Digital Marketing Manager, Social Media Manager, Graphic Designer, Production Artist, Photographer, Videographer, Copywriter</td>
<td>$150</td>
</tr>
<tr>
<td>Project Manager, Account Manager, Market Research Analyst, Production Manager, Translation</td>
<td>$75</td>
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</table>

CPA will not pay Contractor for any administrative costs, support, or services, and/or any overhead.

NTE and Anticipated Budget

<table>
<thead>
<tr>
<th>Task</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Task #1: Digital Strategy</td>
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</tr>
<tr>
<td>Task #2: Market Research</td>
<td>$70,000</td>
</tr>
<tr>
<td>Task #3: Website Development and Maintenance</td>
<td>$80,000</td>
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<td>Task #4: Website Design</td>
<td>$25,000</td>
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<tr>
<td>Task #5: Website Copywriting</td>
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<td>NTE Total:</td>
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</table>
### Not to Exceed (NTE) Costs for Each Task:  
**Renewal Term (June 3, 2022, through June 2, 2023)**

<table>
<thead>
<tr>
<th>Task</th>
<th>Budget</th>
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<tbody>
<tr>
<td>Task #1: Digital Strategy</td>
<td>$0</td>
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<tr>
<td>Task #2: Market Research</td>
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<td>Task #3: Website Development and Maintenance</td>
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<td>Task #4: Website Design</td>
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<tr>
<td>Task #5: Website Copywriting</td>
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**NTE Total:** $190,000

### Not to Exceed (NTE) Costs for Each Task:  
**Renewal Term (June 3, 2023, through June 2, 2024)**

<table>
<thead>
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<th>Task</th>
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<tr>
<td>Task #1: Digital Strategy</td>
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<td>Task #5: Website Copywriting</td>
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**NTE Total:** $392,076

For the Initial Term, the Total Maximum Amount that CPA shall pay Contractor for all Services to be provided under this Professional Services Agreement shall not exceed Two Hundred Thirty-Five Thousand Dollars ($235,000) per contract year, inclusive of any Expense that Contractor may incur subject to CPA’s approval (“Not-to-Exceed” or “NTE”).

For the Renewal Term running from June 3, 2022, to June 2, 2023, the Total Maximum Amount that CPA shall pay Contractor for all Services to be provided under this Professional Services Agreement shall not exceed Two Hundred Thousand Dollars ($200,000) per contract year for the
Renewal Term, inclusive of any Expense that Contractor may incur subject to CPA’s approval ("Not-to-Exceed" or "NTE").

For the final Renewal Term running from June 3, 2023, to June 2, 2024, the Total Maximum Amount that CPA shall pay Contractor for all Services to be provided under this Professional Services Agreement shall not exceed Four Hundred Two Thousand and Seventy-Six Dollars ($402,076) per contract year for the Renewal Term, inclusive of any Expense that Contractor may incur subject to CPA’s approval ("Not-to-Exceed" or "NTE").

A project budget shall be presented and approved by CPA for each task before any work commences. CPA reserves the right to reject and to not pay costs that were not approved in compliance with this provision.

Contractor shall satisfactorily perform and complete, in the judgement of CPA, all required Services in accordance with Exhibit A notwithstanding the fact that total payment from CPA shall not exceed the NTE.

Contractor shall provide CPA with monthly invoices, outlining hours and tasks completed. Hours should be organized by tasks. CPA shall pay approved invoices within 30 days of receipt.

Any travel, administrative, media, and materials ("Expense") will be billed at cost, as a pass through, and shall not to exceed $10,000 per contract year. Contractor shall obtain written approval from CPA prior to incurring any Expense. CPA reserves the right to reject and may not reimburse any Expense that was not approved in compliance with this provision.
Exhibit D – RESERVED
Staff Report – Agenda Item 5

To: Board of Directors

From: Gina Goodhill, Senior Director, Government Affairs

Approved By: Ted Bardacke, Chief Executive Officer

Subject: Approve Positions on Two Bills in the 2023/2024 Legislative Session Related to Changes to the CEQA process

Date: July 6, 2023

RECOMMENDATION

Approve positions on two bills in the 2023/2024 legislative session related to changes to the California Environmental Quality Act (CEQA), as recommended by the Legislative & Regulatory Committee:

a. SB 420 - Recommended Position: Support
b. AB 914 - Recommended Position: Support

BACKGROUND

At the February 2023 Board Meeting, the Board approved CPA’s 2023 Policy Platform and a policy protocol that allows staff to take positions on bills that fall within the scope of the Platform. For bills that fall outside the scope of the Platform; bills that are likely to attract high-profile supporters and detractors; bills that would raise taxes; or bills that would knowingly put CPA at odds with positions that its members agencies have taken, CPA staff must seek direction from the Legislative & Regulatory Committee and Board of Directors before taking a position.

The Legislative & Regulatory Committee recommends that the Board approve Support positions on two bills that propose changes to the California Environmental Quality Act (CEQA) process, with the goal of decreasing electrical transmission and interconnection...
timelines to help the state meet its clean energy goals and reduce both project and customer costs.

Electric transmission lines are high voltage power lines that move electricity from generation resources to distribution lines in neighborhoods. To achieve the state’s 2045 renewable and zero-carbon electricity goals, California needs to build an estimated $30 billion in new transmission capacity by 2040, to support an estimated 120 gigawatts of new generation sources\(^1\). Construction of new transmission lines can open up additional areas for renewable energy development, which can lower generation costs by increasing supply.

The current process to construct transmission lines is lengthy. The CPUC estimates that major transmission projects require five or six years under ideal conditions, though the sponsors and supporters of the below bills estimate that 10 years is more typical. The CPUC further estimates that 3-4 years of that total is taken up by CEQA review, with lawsuits potentially extending that time. However, it should be noted that while CEQA can add to project timelines, some transmission projects do not require CEQA review at all.

As part of the 2022 approved state budget, AB 205 (Committee on Budget) classified transmission lines carrying power from renewable projects over a certain size as Environmental Leadership Development Projects, thereby requiring any CEQA legal disputes to be resolved within 270 days.

In May of 2023, Governor Newsom announced 10 policy proposals through the budget process meant to streamline the permitting and construction of energy and other infrastructure projects. Two of these proposals would streamline permitting by making changes to the CEQA process. The Governor also issued an Executive Order calling for the convening of an Infrastructure Strike Team to identify additional permitting streamlining opportunities. The $310 billion state budget and associated Budget Trailer Bills that the Legislature passed last week included some of these proposals, though the

\(^1\) CAISO, “20 Year Transmission Outlook” (2022)
Legislature rejected advancing all the Governor’s infrastructure proposals through the budget. The bills below complement these larger energy infrastructure goals and help refine the policy details by identifying specific items and taking them through the formal policy process.

**SB 420 (Becker): Transmission Projects, CEQA streamlining**

For projects over 50kv, existing law requires an electric corporation to obtain a CPUC certificate that the present, or future, public convenience and necessity requires construction of the project. Projects under 50kv do not need a CPUC certificate. This public convenience certificate is often part of the larger CEQA process. According to the author’s office and industry stakeholders, the certificate process can take several years and therefore can lengthen the overall CEQA process significantly.

This bill would expand CPUC certificate exemptions from transmission lines under 50 kilovolts to new sub-transmission and distribution lines and to the reconstruction of an existing line that are under 138kv if they meet specific location requirements. Approximately half of existing project applications at the CPUC would fall into this new 50-138 kilovolt threshold range, allowing them to move forward in the CEQA process without a CPUC public convenience certificate.

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2 Size comparisons of typical transmission line structures at various kilovolt amounts. www.osha.gov
This bill is sponsored by the American Clean Power Association and supported by CalCCA, Southern California Edison, labor, business associations, as well as by various clean energy associations and several environmental groups.

**Committee Feedback**

The committee recommended a Support position, pending confirmation that this bill would not supersede local government policies around undergrounding of transmission lines. CPA’s support position will not be officialized until this issue is confirmed.

**AB 914 (Friedman): Permit Streamlining for Existing Distribution Power Lines**

CEQA currently requires state and local lead agencies to establish time limits of one year for completing and certifying EIRs and 180 days for completing and adopting negative declarations. These limits are measured from the date on which an application is received and accepted as complete by the lead agency. However, agencies may provide for a reasonable extension in the event that compelling circumstances justify additional time and the project applicant consents.

This bill would establish a two-year total time limit for the relevant state agency to complete CEQA review and approve or deny an application for an electrical infrastructure project. If the state agency fails to meet this deadline, the bill would require the state agency to submit a report to the Legislature detailing the reasons.

**ATTACHMENT**

None.
To: Board of Directors
From: Gina Goodhill, Senior Director, Government Affairs
Approved By: Ted Bardacke, Chief Executive Officer
Subject: Monthly Bill Position Tracker
Date: July 6, 2023

RECOMMENDATION
Receive and file.

ATTACHMENT
1. 2023 Legislative & Regulatory Policy Platform
<table>
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<tr>
<th>Bill Number &amp; Author</th>
<th>Title &amp; Summary</th>
<th>Status</th>
<th>CPA Position</th>
<th>Alignment with CPA Policy Platform</th>
<th>Notes</th>
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<tr>
<td>SB 410 Senator Josh Becker</td>
<td><strong>Powering Up Californians Act</strong> Would require the CPUC to take various actions to more quickly connect customers to the grid. This include establishing maximum energization time periods, reporting requirements, and a pathway for customers to report energization delays to the CPUC</td>
<td>Referred to Assembly Committee on Utilities and Energy</td>
<td>Support</td>
<td>2e, 3d</td>
<td>This is one of several bills aimed at addressing a growing backlog of utility energization projects.</td>
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<td>AB 691 Assemblymember Phil Ting</td>
<td><strong>Flexible Interconnection and Energization</strong> This bill would require the CPUC to implement an optional flexible interconnection tariff to incorporate the capabilities of power control systems to limit the import and export of electricity</td>
<td>Referred to the Senate Committee on Energy, Utilities and Communication</td>
<td>Support</td>
<td>2f, 3b, 3c, 3d, 3e, 5d</td>
<td>This bill would assist multifamily properties install EV chargers without requiring prohibitively large electricity distribution upgrades.</td>
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<tr>
<td>Bill</td>
<td>Sponsor</td>
<td>Bill Title</td>
<td>Committee</td>
<td>Support</td>
<td>Status</td>
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<tr>
<td>SB 306</td>
<td>Senator Anna Caballero</td>
<td>Climate Change: Equitable Building Decarbonization Program: Extreme Heat Action Plan</td>
<td>Referred to Assembly Committee on Natural Resources</td>
<td>Support</td>
<td>3d, 5d</td>
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<td>Makes changes to the direct install program approved in the state’s 2022 Budget and codifies the Governor’s Extreme Heat Action Plan</td>
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<td>AB 3</td>
<td>Assemblymember Rick Chavez Zbur</td>
<td>California Offshore Wind Advancement Act</td>
<td>Referred to Senate Committee on Natural Resources</td>
<td>Support</td>
<td>2f, 5c</td>
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<td>Would develop a strategy for seaport readiness for offshore wind energy developments, and study the feasibility of achieving 70% and 85% in-state assembly and manufacturing of offshore wind energy projects</td>
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<td>SB 507</td>
<td>Senator Lena Gonzalez</td>
<td>Electric vehicle charging station infrastructure: assessments</td>
<td>Amended 4/17/2023</td>
<td>Support</td>
<td>3b, 5d</td>
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<td>Would require the California Energy Commission (CEC) to quantify EV charging infrastructure needed to support the state’s 2035</td>
<td>Senate Appropriations Committee- Suspense File</td>
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Board of Directors

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<th>Item {{item.number}}</th>
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<tbody>
<tr>
<td><strong>electric vehicle goals, including in disadvantaged communities and between different types of housing. If infrastructure is not on track to meet state goals and is disproportionately distributed, the CEC must develop solutions.</strong></td>
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<tr>
<th><strong>AB 1373</strong></th>
<th><strong>Energy</strong></th>
<th><strong>Amended 5/22/2023</strong></th>
<th><strong>Neutral</strong></th>
<th><strong>1b; 1d; 2a; 2d</strong></th>
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<tbody>
<tr>
<td><strong>Assemblymember Eduardo Garcia</strong></td>
<td><strong>Would make significant policy changes to electricity market structure and regulation as proposed by the Newsom Administration’s 2023 budget energy trailer bill, including the creation of a central procurement entity (CPE) run by either the Department of Water Resources (DWR) or IOUs; capacity payments for load-serving entities (LSEs) that are deficient in their reliability obligations and that used DWR’s Strategic Reliability Reserve (SRR) to meet their</strong></td>
<td><strong>In Assembly Floor Process</strong></td>
<td></td>
<td><strong>This bill was amended to remove the direct threats to CCAs autonomy, including limiting the Central Procurement Entity to the Department of Water Resources for large-scale offshore wind and specified geothermal; removing duplicate capacity payments; and eliminating</strong></td>
</tr>
</tbody>
</table>
| AB 1538 | **Clean Energy Reliability Program**  
Would create an incentive program for load-serving entities that procure clean energy capacity above their minimum CPUC requirements in order to enhance electricity system reliability and reduce customer costs. | Amended  
4/17/2023  
Assembly Appropriations Committee- Suspense File  
Held in Committee | SPONSOR | 2a; 2d; 5a; 5c; | CPA will explore opportunities to advance this concept in 2024. |
Overview and Purpose
The Clean Power Alliance (CPA) Legislative and Regulatory Policy Platform (Platform) serves as a guide to the CPA Board of Directors and CPA staff in their advocacy efforts and engagement on policy matters of interest to CPA. The Platform allows both members of the CPA Board of Directors and CPA staff to pursue actions at the regional, state and federal legislative and regulatory levels in a consistent manner and with the understanding that they are pursuing actions in the best interest of the organization and its mission, its member agencies, and its customers.

The Platform provides direction to CPA staff on positions that should be taken on regulatory matters and legislative bill proposals. The Platform also provides guidance to the Chief Executive Officer on positions that should be taken on legislative and regulatory matters that come before the California Community Choice Association (CalCCA) Board of Directors.

CPA staff report to the Board monthly on all positions taken on legislative bills. For bills that fall outside the scope of this platform, bills that are likely to attract high-profile supporters and detractors, bills that would raise taxes, or bills that would knowingly put CPA at odds with positions that its member agencies have taken, CPA staff will seek approval of a proposed position to the Legislative & Regulatory Committee and Board of Directors before taking a position.

Policy Principles
The Legislative and Regulatory Policy Platform is centered around five basic principles:

1. Protecting CPA’s local control and competitive position, especially as it relates to rates, finances, power procurement and expansion of its service territory.
2. Pursing power resource planning and procurement that promote the growth in renewable energy capacity at the local level and reduce fossil fuel dependency, with the goal of combating climate change.

3. Developing and administering customer programs that encourage clean energy adoption by CPA customers.

4. Ensuring fair access to data, particularly as it relates to energy usage, billing, and information needed to develop and administer customer programs.

5. Supporting CPA’s ability to set electric rates and offer programmatic services that are affordable and inclusive for all.

These principles are incorporated throughout the below platform.

Policy Platform

1) Affordability and Local Control
   a. Fair rates and cost allocation: CPA will pursue administrative and legislative initiatives that will ensure that non-bypassable charges assessed for CPA customers are fair, and that CPA’s customers are not unnecessarily burdened by non-bypassable charges.
   b. Finances: CPA will pursue administrative and legislative initiatives to ensure that CPA is eligible to apply and receive funding made available to the electricity sector for decarbonization, reliability, and affordability purposes, and that CPA’s financial health are not disparately impacted by new regulations.
   c. CCA Expansion: CPA will pursue administrative and legislative initiatives to protect CPA’s ability to expand its service to new member agencies.
   d. Local Control: CPA will pursue administrative and legislative initiatives to protect CPA Board’s authority over CPA’s procurement, rate-setting, and customer program development activities.

2) Power Resources Planning and Procurement
   a. Resource Adequacy and Reliability: CPA will pursue administrative and legislative initiatives that will enable CPA to secure capacity resources to meet its reliability obligations, such as initiatives that evaluate the supply of capacity resources available to load serving entities (LSEs), determine the appropriate market mechanisms for LSEs to procure capacity resources, and develop a durable policy framework that encourages all LSEs to construct their fair share of new capacity resources to maintain grid reliability while pursuing decarbonization efforts.
b. Carbon-Free Resources: CPA will pursue administrative and legislative initiatives that will maximize CPA’s ability to procure carbon-free resources to meet or exceed the needs of CPA’s three product offerings and its long-term carbon-free procurement goal as required by SB 100 and other statutory or regulatory obligations.

c. Renewable Resources: CPA will pursue administrative and legislative initiatives that will maximize CPA’s ability to procure eligible Renewable Portfolio Standard (RPS) resources to meet the needs of CPA’s three product offerings and its long-term RPS procurement goal as required by SB 100 and other statutory or regulatory obligations.

d. Integrated Resource Plan: CPA will pursue administrative and legislative initiatives that will maximize CPA’s ability to plan and procure resources to meet various environmental and reliability goals set by state laws and by its Board of Directors, while offering affordable products and programs to serve its customers, including disadvantaged communities.

e. Transmission: CPA will pursue administrative and legislative initiatives that will provide CPA adequate access to transmission capacity to maximize its procurement of RPS-eligible or carbon-free resources that meet various statutory and regulatory requirements.

f. Research & Development: CPA will pursue administrative and legislative initiatives that support the research and development of new energy resources that can be procured to meet the reliability and decarbonization goals set by the State and its Board of Directors.

3) Customer Programs

a. Demand Response, Demand Flexibility and Energy Efficiency: CPA will pursue administrative and legislative initiatives that will enable CPA to pursue demand response programs and opportunities for its customers.

b. Zero-emission vehicles: CPA will pursue administrative and legislative initiatives to promote electrification of the transportation sector in response to state and federal goals aimed at increasing the usage of zero emission vehicles.

c. Building decarbonization: CPA will pursue administrative and legislative initiatives that supports the ability of CPA to promote electrification and the reduction of natural gas usage in the building sector.

d. Local Grid Management and Resiliency: CPA will pursue administrative and legislative initiatives that supports the ability of CPA and its member agencies to offer local grid management and resiliency solutions to increase local reliability and adaptability that could protect against power outages and extreme heat.

e. Distributed Energy Resources: CPA will pursue administrative and legislative initiatives that supports the ability of CPA to offer and utilize distributed
energy resources as part of its reliability, resiliency and community engagement strategies.

f. Research and Development: CPA will pursue administrative and legislative initiatives that supports the ability of CPA to explore new opportunities related to behind the meter clean energy resources.

4) **Data Access**
   a. Timely and Accurate Access to Customer Data: CPA will pursue administrative and legislative initiatives that will enable CPA to obtain timely and accurate access to its customers’ data to improve billing accuracy and inform the development and implementation of customer programs.
   b. Fair Fees for Data Management Services: CPA will pursue administrative and legislative initiatives to ensure that the fees due to Southern California Edison for data access and management are fairly assessed based on data needs and potential technological improvements.

5) **Diversity, Equity, Inclusion**
   a. Customer Protection: CPA will pursue administrative and legislative initiatives that supports the protection of all ratepayers, particularly environmental and social justice communities in CPA’s service territory.
   b. Supplier Diversity: CPA will pursue administrative and legislative initiatives that supports supplier diversity in CPA’s contracting activities and through women-owned, minority-owned, disabled-veteran-owned, and lesbian, gay, bisexual, and/or transgender owned business enterprises.
   c. Workforce Development: CPA will pursue administrative and legislative initiatives that supports workforce development with a focus on new stable, well-paying local jobs, and participation in a just transition to a low-carbon economy.
   d. Energy Equity: CPA will pursue administrative and legislative initiatives that supports increased access to clean energy technologies, clean energy and contracting jobs, and clean energy opportunities for environmental and social justice communities in CPA’s service territory.
Staff Report – Agenda Item 7

To: Board of Directors

From: Christian Cruz, Community Outreach Manager

Approved by: Ted Bardacke, Chief Executive Officer

Subject: Community Advisory Committee (CAC) Report

Date: July 6, 2023

RECOMMENDATION

Receive and file.

MEETING REPORT

Workforce Development Update

In June, the CAC received a presentation on CPA’s Workforce Development programs. In 2019, the Board approved the Mohave Power Purchase Agreement (PPA), which included $1,000,000 for CPA to develop union and non-union workforce development pathways over four years. In 2022, approximately $400,000 was released to three organizations: the Los Angeles Clean Tech Incubator, Ventura County Electrical Joint Apprenticeship Training Committee (VCEJATC), and the Los Angeles Electrical Training Institute (LAETI). CPA staff provided an update on next steps and proposed funding for the 2023-2024 workforce development pathways for review and feedback by the CAC.

In addition to continuing and expanding the currently funded workforce development pathways, staff proposed that part of this funding be used to expand the Voyager Scholarship program. The program provides scholarships in $1,000 increments to community college students within workforce development, renewable energy, engineering, or environmental programs. CPA will distribute $105,000 in additional
The CAC recommended that staff include additional context or substance in the presentation to the Board as it relates to the electric vehicle supply equipment (EVSE) outlined in the Los Angeles Cleantech Incubator (LACI) project management training course. The CAC also recommended that staff define the types of charging infrastructure highlighted in the presentation. In addition, the CAC recommended that staff include a mechanism to track those who have received a workforce development benefit and highlight their stories for the CAC and Board in the future.

CPA Local Programs Mid-Cycle Review Update
The CAC received an update on CPA’s Local Programs for a Clean Energy Future (Strategic Plan) mid-cycle refresh and Action Plan, which expands and refines approaches under the Strategic Plan within the three program pillars: (1) Resilience and Grid Management; (2) Electrification; (3) Local Procurement. The Action Plan builds upon the existing Strategic Plan to offer additional detail on strategies and adjustments to programs that will occur over the next few years. The CAC initially provided feedback to staff in February, and staff provided an update at the June CAC meeting.

The CAC requested that staff include the definition of a Virtual Power Plant (VPP) in future communication for ease of understanding. As it relates to the proposed Customer Energy Advisor role, the CAC recommended that it be structured in such a way that it will provide ease of access for customers. In addition, the CAC recommended that staff provide projected metrics for the Board (i.e., the anticipated number of customers serviced, the expected total of incentives to be distributed, etc.). In doing so, it will provide the Board with a sense of scale for the new programs.

ATTACHMENT
1. CAC Meeting Attendance

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1 Rio Hondo College, East Los Angeles College, Compton College, Antelope Valley College, Moorpark College, Ventura College, and Oxnard College.
### Community Advisory Committee Attendance

**2023**

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A – Absent  
X – Medical/Personal Leave

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### Action Items and Presentations

**January**
Building Electrification (Reach Codes)

**February**
Local Programs Mid-Cycle Review

**March**
Canceled

**April**
NEM 3.0 Policy Proposals  
FY 2023/24 Rate Setting and Budget

**May**
Canceled

**June**
CPA Local Programs Mid-Cycle Review Update  
Workforce Development Update
RECOMMENDATION
Approve and authorize the Chief Executive Officer to execute the following agreements: (1) a 10-year Power Purchase Agreement with Community Renewable Energy Services, Inc (CRES) for the Dinuba Energy (Dinuba) 11.5 MW biomass project and (2) a 15-year Energy Storage Agreement with Sagebrush ESS IIB, LLC (Sagebrush) for a 40 MW four-hour energy storage project.

BACKGROUND
Mid-Term Reliability (MTR) Requirement
In June 2021, the CPUC issued its Decision Requiring Procurement to Address Mid-Term Reliability (2023-2026) (MTR Decision), which ordered CPA to procure a total of 679 MW of new reliable capacity between 2023-2026. This procurement is intended to address California’s need for new resources on the grid amid the planned retirement of fossil fuel resources and the uncertainty about the future operations of the Diablo Canyon nuclear power plant.¹

¹ The planned 5-year extension of the Diablo Canyon nuclear power plant does not change the CPUC’s ordered procurement.
CPA’s MTR-compliant procurement target is divided into three different qualifying resource categories:

1. Conventional renewables, renewables plus storage or minimum 4-hour standalone storage, which must come online by June 1, 2025, with interim requirements for June 1, 2023 and June 1, 2024.
2. Baseload\(^2\) renewables (e.g. geothermal or biomass), which must come online by June 1, 2026, then extended to June 1, 2028 by the CPUC.\(^3\)
3. Long-duration storage (8+ hours of duration), which must come online by June 1, 2026, then extended to June 1, 2028 by the CPUC.\(^4\)

**CPA’s 2022 MTR RFO – Dinuba**

CPA launched its 2022 Mid-Term Reliability Request For Offer (MTR RFO) in August 2022 and received responses from 37 conforming renewable, renewable plus storage, and standalone storage projects, including 1 Baseload renewable offer. On November 16, 2022, a review team consisting of three members of the Energy Planning and Resource Committee (Energy Committee) as well as senior staff consisting of the Chief Executive Officer, Chief Operating Officer, Vice President of Power Supply and Director of Structured Contracts met to analyze the submitted projects. These review team members evaluated confidential terms and conditions, including pricing, and selected a shortlist of projects to be recommended to the Energy Committee.

On November 23, 2022, the Energy Committee approved the shortlisting of six projects, including Dinuba, as part of the 2022 MTR RFO and authorized staff to enter negotiations with Dinuba for MTR compliance and contribution towards CPA’s Resource Adequacy (RA) compliance.

Dinuba was originally shortlisted as a 15-year term offer but shortly after shortlisting, Dinuba changed ownership and the new owners expressed reluctance to enter into a 15-
year term. Instead, CPA and Dinuba agreed to enter exclusivity for a 10-year term offer on the facility for a price lower than the original 15-year shortlisted offer.

**Bilateral Offer - Sagebrush**

In addition to the MTR compliance requirements, due to California’s shortage of RA resources and planned restructuring of the RA program to require hourly accounting where energy storage capacity contracts will be important, CPA has also sought strategic opportunities to procure resources that have high RA value and near-term Commercial Operation Dates (COD), i.e., before 2025.

On March 22, 2023, the Energy Committee authorized staff to enter bilateral negotiations for two standalone storage projects, including Sagebrush, which would count towards MTR compliance requirements and contribute to CPA’s future compliance requirements for RA. Of the two projects authorized in March, only Sagebrush entered exclusivity with CPA. The other project proposed to significantly increase its price and CPA staff declined to continue negotiations. Instead, the developer was encouraged to bid the project into the 2023 Clean Energy and Reliability RFO.

Staff has concluded negotiations with both Dinuba and Sagebrush and is requesting Board approval for the Chief Executive Officer to execute the agreements.

For both projects, CPA retained Todd Larsen with Clean Energy Counsel to represent CPA and its interests in the negotiations. Mr. Larsen’s work was overseen by CPA’s General Counsel.
OVERVIEW OF PROJECTS

<table>
<thead>
<tr>
<th>Project</th>
<th>Technology</th>
<th>Capacity (MW)</th>
<th>Online Date</th>
<th>Term</th>
<th>Developer</th>
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<tr>
<td>Dinuba</td>
<td>Biomass</td>
<td>11.5 MW</td>
<td>1/10/2024</td>
<td>10</td>
<td>CRES</td>
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<td>Sagebrush</td>
<td>Four-hour Standalone Storage</td>
<td>40 MW</td>
<td>6/1/2024</td>
<td>15</td>
<td>Terra-Gen</td>
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</table>

The projects are described in detail in the attached Project Description.

RATIONALE

Dinuba will contribute 10.7 MW towards CPA’s baseload MTR compliance and Sagebrush will contribute 36.3 MW towards CPA’s conventional MTR compliance beginning in 2024, covering 18% and 4% of CPA’s MTR need in the corresponding categories. In addition to contributing to CPA’s compliance with the MTR requirements, both projects will also support CPA’s near-term RA compliance. Additionally, as discussed in greater detail below, Dinuba will provide CPA with the opportunity to obtain SB 1383 compliance credits for biomass energy that is created using SB 1383 compliant fuel.

The table below shows CPA’s MTR position with Dinuba and Sagebrush.

<table>
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<tr>
<th>Cumulative CPA Procurement Need – Conventional (4-Hr Storage)</th>
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<td>CPA Procurement Need – Baseload Renewables</td>
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</table>

5 The overall capacity of the facility (e.g. “nameplate”) is different than how much of that capacity the CPUC allows an LSE to count towards its compliance obligation. Essentially, the CPUC “derates” the nameplate capacity to account for uncertainty in actual production.
ENVIRONMENTAL REVIEW

These PPAs for the purchase of energy do not fall under the definition of “project” under Section 21065 of the Public Resources Code and under California Environmental Quality Act (CEQA) Guidelines Section 15378(a). In addition, the PPAs are exempt under CEQA Guidelines Section 15061(b)(3). The project developers of Dinuba and Sagebrush are each responsible for acquiring necessary CEQA review and permits with relevant lead agencies.

Dinuba

Project developer CRES will be responsible for acquiring any necessary permits with Tulare County. The Dinuba project is an existing facility requiring repairs and equipment replacement, and as such it will not require CEQA review. CPA has no role, jurisdiction, or authority whatsoever with respect to CEQA review or project approval.

Sagebrush

Project developer Terra-Gen Power is responsible for acquiring and has received a plot plan permit from Kern County. As the Sagebrush project is located within Terra-Gen's existing wind resource and transmission facilities footprint, it will not require CEQA review. CPA has no role, jurisdiction, or authority whatsoever with respect to CEQA review or project approval.
ATTACHMENTS

1. Project Description A: Dinuba
2. Project Description B: Sagebrush
3. Power Purchase Agreements Presentation
4. Power Purchase Agreement with CRES (Dinuba)
5. Energy Storage Agreement with Sagebrush

\[6\] Consistent with industry practice, portions of the agreement have been redacted to protect market sensitive information.
PROJECT DESCRIPTION A: DINUBA

Project Overview

Dinuba is a repowered 11.5 MW biomass facility located in Tulare County. The facility was originally built in 1985 to provide power and steam to an adjacent sawmill and was purchased by PG&E in 1995 and then by CRES in 2003. The facility was recommissioned in 2001 to sell power to CAISO and was operating as a merchant plant until 2015 when CRES shut down the facility. The commercial operation date of the repowered facility is expected to be January 10, 2024 but may be delayed up to one year after contract execution to allow the facility to complete upgrades and close financing.

Biomass facilities such as Dinuba are California Energy Commission (CEC) eligible renewable resources even though they can emit carbon dioxide during electricity production. This CEC renewable designation for biomass facilities is provided, in part, because they consume material that would otherwise be burned in the open, leading to serious local air quality issues along with carbon emissions, or decompose and emit methane, a highly potent greenhouse gas. Geothermal is the only other resource that meets both the CPUC’s baseload criteria and the CEC renewable energy criteria; geothermal energy also emits small amounts of carbon dioxide. CPA expects the GHG emissions profile of Dinuba, as reported on its Power Content Label, to be similar to that of its Geysers geothermal facility, approximately 10 times lower than system energy.

Dinuba’s permitted fuels are wood residues, both agricultural and urban, and soiled biomass (non-recyclable paper) from urban processing facilities and will have some emissions associated with its energy production. A wet scrubber at the facility will remove ash or acid gases from the exhaust and 98% of the particulate matter from the gas stream and cool and remove 99.9% of the ammonia/sulfur chlorides (PM 10 & PM 2.5) from the gas stream and 100% of the visible ammonia sulfate plume. A continuous emissions monitoring system mounted on the facility will record Flow, O2, CO, NOx and opacity levels which are reported to the San Joaquin Valley Air Quality Management District (SJVAQMD), the local air permitting authority.
SB 1383 is a mandate that aims to slow climate change by diverting organic materials from landfills and allows compliance credits to be generated for biomass energy production sourced from eligible, compliant fuel sources. The permit from the SJVAQMD that enables the facility to use up to 50% soiled biomass as its approved fuel in turn allows Dinuba to generate SB 1383 qualifying electricity. Dinuba has committed to providing a minimum of approximately 10% of its expected energy production from SB 1383 compliant fuel, for a premium price. CPA is entitled to receive the SB 1383 compliance credits generated at Dinuba as part of the proposed contract. In turn, CPA can transfer those credits to interested member agencies to help them satisfy their SB 1383 purchasing compliance obligations. Dinuba and CPA can agree to increase SB 1383 fuel production at the facility for a negotiated price although Dinuba’s ability to increase its SB 1383 compliant electricity is dependent on its ability to source compliant fuel. CPA will also be able to decrease SB 1383 energy production with advanced notice.

Dinuba is an existing facility with site control and required permits and interconnection agreements in place. CAISO has agreed to extend Dinuba’s Full Capacity Deliverability Status (FCDS), which is required to provide resource adequacy, as long as Dinuba can meet certain development milestones which will be satisfied if Dinuba achieves COD by January 10, 2024 and executes a contract with CPA. If Dinuba’s COD is anticipated to extend beyond January 10, 2024, due to delays in closing its financing, CPA intends to work with Dinuba to request a further extension to the COD timeline required to retain FCDS.

Under the proposed agreement, CPA pays for the use of the facility at a fixed-price rate per MWh, with no escalation, for the full term of the contract (10 years). Dinuba has agreed to a reduced contract capacity of 10.5 MW for the first contract year to help reduce costs to CPA. CPA is entitled to all product attributes from the facility, including energy, ancillary services, and resource adequacy.
Developer
CRES purchased the Dinuba Facility in 2003 and operated it for 12 years and has experience operating other biomass facilities in California as well as a history of associated business interests in both California agriculture and urban waste management. CRES is responsible for acquiring all biomass fuel, maintaining permits, and reporting to regulating agencies.

CRES has continued to keep on staff at both plant managers for Dinuba Energy and nearby Madera Power. In addition, CRES has kept the control room operators on staff and several of the other key employees even during the past years when the facilities have not been operating.

Evaluation Criteria
CPA ranks projects for economic value based on the net present value (NPV) to CPA and on a High, Medium, Neutral, and Low scale in five other evaluation criteria categories (Development Score, Workforce Development, Environmental Stewardship, Benefits to Disadvantaged Communities, and Project Location). Below is the ranking assigned to this project in each of those categories.

Value
Dinuba was the only Baseload renewable offer received the 2022 Mid-Term Reliability RFO. While Dinuba is not NPV positive, its pricing is competitive and ranks #2 of 3 relative to other facilities CPA has contracted with in the past to meet MTR compliance requirements for Baseload renewables (i.e. geothermal facilities).

Development Score
The project ranks High as it is an existing facility that had been mothballed and is substantially de-risked. All land for the project is owned by Dinuba and the interconnection agreement is executed. Permits are secured and upgrades will begin as soon as financing closes or is nearly complete.
**Workforce Development**
The project ranks medium as construction for the project will not be conducted using a project labor agreement but will commit to paying a prevailing wage and targeted hire commitments. The developer estimates this project will create up to 23 new permanent jobs.

**Environmental Stewardship**
The project ranks High as it is located on disturbed lands with existing energy infrastructure on it and no avoidance overlaps.

**Benefits to Disadvantaged Communities**
The project ranks High as it is located within a Disadvantaged Community (DAC) and will provide benefits to DACs including local employment opportunities.

**Project Location**
The project ranks Medium as it is located within California but not within Los Angeles or Ventura County.

**PROJECT DESCRIPTION B: SAGEBRUSH**

**Project Overview**
Sagebrush is a proposed 40 MW / 160 MWh lithium-ion battery storage facility located in the Mojave wind resource area in Kern County. The commercial operation date is June 1, 2024.

As the Sagebrush project is located within Terra-Gen's existing wind resource and transmission facilities footprint, it will not require CEQA review. The project required a plot plan permit from Kern County which was received in 2021. An interconnection agreement for the project has already been executed.

Under the proposed agreement, CPA pays for the use of the project at a fixed-price rate per kW-month, with no escalation, for the full term of the contract (15 years). CPA is
entitled to all product attributes from the facility, including energy, ancillary services, and resource adequacy. The agreement also includes a Bridge Capacity period from June 2024 through December 2024, during which Terra-Gen will provide 40 MW of system RA from one or more RA resources other than the Sagebrush facility. Terra-Gen expects to achieve Commercial Operation’s at the facility between June 1, 2024 and January 1, 2025 and has agreed to sell to CPA the 40 MW of bridge capacity for the full length of this period regardless of when the facility achieves COD.

Developer
Terra-Gen is an experienced developer with experience in developing, constructing, and operating wind, solar, and battery storage projects across North America. Terra-Gen operates over 1.3 GW of wind, solar, and energy storage facilities and has developed or acquired over $25 billion in assets.

CPA has two existing long-term contracts with Terra-Gen: an agreement for the 100 MW Sanborn four-hour storage facility and an agreement for the 21.6 MW Voyager Wind II facility.

Evaluation Criteria
CPA ranks projects for economic value based on the net present value (NPV) to CPA and on a High, Medium, Neutral, and Low scale in five other evaluation criteria categories (Development Score, Workforce Development, Environmental Stewardship, Benefits to Disadvantaged Communities, and Project Location). Below is the ranking assigned to this project in each of those categories.

Value
The Sagebrush project is NPV positive. It ranks within the third quartile (Q3) of all offers submitted in the 2022 Mid-Term Reliability RFO. CPA shortlisted 3 four-hour storage projects with higher NPV in the 2022 Mid-Term Reliability RFO but these projects did not enter exclusivity with CPA. Due to the limited availability of 2024- and 2025-online date projects in the market, the Sagebrush project is a good value overall.
Development Score
The project ranks High as it is in late-stage development and substantially de-risked. All land for the project is under contract and the interconnection agreement is executed. The major discretionary permit with Kern County has been secured already and a Conditional Use Permit is not required, only ministerial permits have yet to be obtained.

Workforce Development
The project ranks High as construction for the project will be constructed using a project labor agreement. The developer estimates this project, together with an adjacent expansion project, will create up to 110 new construction jobs and 3 new permanent jobs.

Environmental Stewardship
The project ranks High as it is located on a parcel with existing energy infrastructure.

Benefits to Disadvantaged Communities
The project ranks High as it is located within a Disadvantaged Community (DAC) and will provide benefits to DACs including a local high school scholarship and community fire and safety programs that Terra-Gen sponsors.

Project Location
The project ranks Medium as it is located within California but not within Los Angeles or Ventura County.
Item 8
Power Purchase Agreements

July 6, 2023
Executive Summary

In June 2021, the CPUC issued its Decision Requiring Procurement to Address Mid-Term Reliability (MTR), which ordered CPA to procure a total of 679 MW of new reliable capacity between 2023-2026, including baseload renewables (geothermal or biomass) and standalone storage resources (4-hour and 8-hour batteries).

To comply with the procurement order, CPA launched its 2022 MTR Request for Offers (RFO) in August 2022. The RFO closed in September 2022.

On November 23, 2022 the Energy Committee reviewed and approved the recommended MTR RFO shortlist and waitlist authorizing Staff to enter into exclusive negotiations with those projects, one of which was the Dinuba biomass project.

Given market tightness and short compliance deadlines, CPA also engaged in bilateral discussions with counterparties after the RFO closed. On March 22, 2023, the Energy Committee authorized staff to enter into bilateral negotiations with two standalone storage projects, one of which was the Sagebrush energy storage project.

Staff has concluded negotiations for both the Sagebrush and the Dinuba projects and is requesting Board approval for the Chief Executive Officer to execute those agreements.
Agenda

- Action Requested
- Background
- Project Overview Dinuba
- Project Overview Sagebrush
**Action Requested**

CPA is seeking Board approval for the Dinuba power purchase agreement and the Sagebrush energy storage contract:

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<th>Capacity</th>
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<td>15 Years</td>
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2022 Mid-Term Reliability Background
2022 Mid-Term Reliability Compliance

In June 2021, the CPUC issued its Decision Requiring Procurement to Address Mid-Term Reliability which ordered CPA to procure a total of 679 MW of new reliable capacity between 2023-2026.

In February 2023 CPUC issued Decision 23-02-040 which extended the compliance deadline for Baseload Renewables and Long-Duration storage from 2026 to 2028 and required CPA to procure an additional 117 MW’s of Reliable Capacity in both 2026 and 2027.

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*Eligible executed contracts positions include Dinuba and Sagebrush
Project Overview
Dinuba
Biomass Technology

Biomass facilities are California Energy Commission eligible renewable resources that can generate electricity 24 hours, 7 days a week, and can count towards the MTR baseload renewable category, which is typically satisfied with new build geothermal or biomass. These resources are difficult to procure due to limited availability of new resources.

Biomass facilities typically emit CO2 during energy production. However, they are considered eligible renewable resources because they consume material that would have otherwise been burned in the open or decompose and emit methane, a more potent greenhouse gas compared to CO2.

Dinuba is permitted to burn wood residues, both agricultural and urban, and up to 50% soiled biomass (non-recyclable paper) to generate electricity. These are fuels that would otherwise have been open burned or decomposed into methane; Dinuba's fuel source is waste (i.e. not produced specifically to run the facility as is the case with some other biomass facilities).

Dinuba is expected to have a similar – and very low – GHG emissions profile and will be approximately equal to the Geysers geothermal resources in CPA's portfolio in terms of its impact on CPA's reported emissions.
SB 1383 Compliant Fuel Consumption

SB 1383 is a mandate that aims to slow climate change by diverting organic materials from landfills and allows compliance credits to be generated for biomass energy production sourced from eligible, compliant fuel sources.

In addition to diverting organic materials from landfills, cities and counties are required by SB 1383 to purchase a certain amount of end-product produced with SB 1383 compliant source materials.

Dinuba has committed to producing a minimum of approximately 10% of its expected energy production using SB 1383 compliant fuel.

This energy will be procured by CPA at a cost premium to other energy produced by the facility.

CPA is entitled to all attributes from the facility, including SB 1383 compliance credits, and will be able to transfer these credits to interested member agencies – more than a dozen CPA members have expressed interest in obtaining these credits from CPA.

Dinuba and CPA can request to increase expected SB 1383 energy throughout the term of the contract for a negotiated price, and CPA may decrease the required amount of SB 1383 compliant energy production with advance notice.
Dinuba Biomass Project

**Project Overview**
- 11.5 MW* biomass project
- Located in Tulare County, California
- Repowered biomass facility; original operations ended in 2015
- COD expected January 10, 2024
  - COD is required no later than 360 days after contract execution
- Seller: Community Renewable Energy Services (CRES)

**Rationale**
- MTR compliance
- RA value
- Portfolio fit – generates energy in non-solar hours
- 1383 compliance credit generation

**Evaluation Summary**

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<td>Project Location</td>
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*Contract Capacity will be 10.5 MW for the first contract year to help reduce costs to CPA
**Dinuba was the only baseload renewable resource submitted in the 2022 MTR RFO
Project Overview
Sagebrush
Sagebrush Energy Storage

Project Overview

- 40 MW, 4 MWh standalone storage project
- Located in Kern County, California
- New build project with a June 1, 2024 online date
- Developer: Terra-Gen
- Bridge Capacity Period: June 2024 – December 2024
  - Terra-Gen will provide 40 MW of system RA from one or more resources other than the Sagebrush facility

Rationale

- MTR and near-term RA compliance
- RA value
- NPV positive

Evaluation Summary

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<th>Criteria</th>
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<tr>
<td>Value</td>
<td>NPV Positive; 3rd quartile of all offers in the 2022 MTR RFO</td>
</tr>
<tr>
<td>Development Score</td>
<td>High</td>
</tr>
<tr>
<td>Workforce Development</td>
<td>High</td>
</tr>
<tr>
<td>Environmental Stewardship</td>
<td>High</td>
</tr>
<tr>
<td>Benefits to DACs</td>
<td>High</td>
</tr>
<tr>
<td>Project Location</td>
<td>Medium</td>
</tr>
</tbody>
</table>
Summary

- Dinuba and Sagebrush will make CPA almost completely compliant with current Mid-Term Reliability compliance requirements and contribute to both short-term and long-term Resource Adequacy obligations.
- Both projects have good qualitative scores.
- Dinuba will provide additional member agency benefits when using SB 1383 compliant fuel.

Action Requested: CPA is seeking Board approval for the 11.5 MW Dinuba long-term power purchase agreement and the 40 MW Sagebrush standalone energy storage agreement.
RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

**Seller:** Community Renewable Energy Services, Inc.

**Buyer:** Clean Power Alliance of Southern California, a California joint powers authority

**Description of Facility:** Dinuba Energy Biomass Power Plant

**Milestones:**

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Expected Date for Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial Close</td>
<td>July 10, 2023</td>
</tr>
<tr>
<td>Construction Start Date</td>
<td>July 11, 2023</td>
</tr>
<tr>
<td>CAISO Confirmation of FCDS</td>
<td>Completed</td>
</tr>
<tr>
<td>Date of CAISO Commercial Operation</td>
<td>January 10, 2024</td>
</tr>
<tr>
<td>Commercial Operation Date</td>
<td>January 10, 2024</td>
</tr>
</tbody>
</table>

**Delivery Term:** Ten (10) Contract Years

**Delivery Term Expected Energy:**

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Total Expected Energy (including California Senate Bill 1383 Energy) (MWh)</th>
<th>Expected Energy that qualifies under California Senate Bill 1383 (MWh)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>70,000</td>
<td>7,000</td>
</tr>
<tr>
<td>2</td>
<td>81,000</td>
<td>8,100</td>
</tr>
<tr>
<td>3</td>
<td>81,000</td>
<td>8,100</td>
</tr>
<tr>
<td>4</td>
<td>81,000</td>
<td>8,100</td>
</tr>
<tr>
<td>5</td>
<td>81,000</td>
<td>8,100</td>
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<tr>
<td>6</td>
<td>81,000</td>
<td>8,100</td>
</tr>
<tr>
<td>7</td>
<td>81,000</td>
<td>8,100</td>
</tr>
</tbody>
</table>

* MWh = Megawatt-hours
*Subject to adjustment as set forth in Definition of SB 1383 Expected Energy\n
**Guaranteed Capacity:** 11.5 MW of total Facility capacity; *provided*, during the first Contract Year, Seller shall only operate the Facility at 10.0 MW of total Facility capacity unless Buyer or its designated SC provides Notice to Seller to operate the Facility above such 10.0 MW limit in response to a CAISO request or instruction with respect to the Facility specifically or the market generally.

**Renewable Rate & SB 1383 Renewable Rate:**

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Renewable Rate ($/MWh)</th>
<th>SB 1383 Renewable Rate ($/MWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 10</td>
<td>/MWh (flat) with no escalation</td>
<td>/MWh (flat) with no escalation</td>
</tr>
</tbody>
</table>

**Seller’s Assumed Tax Credits:** The PTC at $.027/kWh for the Facility.

**Guaranteed Construction Start Date:** July 11, 2023

**Guaranteed Commercial Operation Date:** January 10, 2024

**Product**

- ☒ Energy
- ☒ Green Attributes (if Renewable Energy Credit, please check the applicable box below):
  - ☒ Portfolio Content Category 1
  - ☐ Portfolio Content Category 2
  - ☐ Portfolio Content Category 3
- ☒ Capacity Attributes

**Scheduling Coordinator:** Buyer

**Security Amounts:**

**Development Security:** $105/kW of Guaranteed Capacity
**Performance Security**: $105/kW of Installed Capacity
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Exhibit O  Form of Consent to Collateral Assignment
Exhibit P  CPM Adjustment Factors
Exhibit Q  Supply Chain Code of Conduct
Exhibit R  Material Permits
Exhibit S  [Reserved]
Exhibit T  Force Majeure Event and/or Development Cure Period Claim Form
Exhibit U  Operating Restrictions
Exhibit V  Form of Biomass Conversion Facility Report
This Renewable Power Purchase Agreement ("Agreement") is entered into as of __________ (the “Effective Date”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “Party” and jointly as the “Parties”. All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Seller intends to develop, design, construct, own, and operate the Facility;

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product;

WHEREAS, Buyer is entering into the Agreement with the intention that the Facility’s NQC will be counted toward Buyer’s clean energy mid-term reliability procurement obligations set forth in CPUC D.21-06-035 (as may be revised by further decisions) in the category of generating resources that are zero emitting, with at least an eighty percent (80%) capacity factor;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1
DEFINITIONS

1.1 Contract Definitions. The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“AC” means alternating current.

“Accepted Compliance Costs” has the meaning set forth in Section 3.12(c).

“Adjusted Energy Production” has the meaning set forth in Exhibit G-1.

“Adjusted SB 1383 Energy Production” has the meaning set forth in Exhibit G-2.

“Affiliate” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“Agreement” has the meaning set forth in the Preamble and includes the Cover Sheet and any Exhibits, schedules and any written supplements hereto.
“**Approved Forecast Vendor**” means (x) Seller or (y) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

“**Automated Dispatch System**” or “**ADS**” has the meaning set forth in the CAISO Tariff.

“**Automatic Generation Control**” or “**AGC**” has the meaning set forth in the CAISO Tariff.

“**Available Capacity**” means the capacity of the Facility, expressed in whole MWs, that is available to generate Energy.

“**Bankrupt**” or “**Bankruptcy**” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undischarged for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

“**Biomass Conversion Facility Report**” means a report provided by Seller to Buyer with each monthly invoice, and as reasonably requested by Buyer, substantially in the form in Exhibit V, or such other form as reasonably requested by Buyer.

“**Business Day**” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

“** Buyer**” has the meaning set forth on the Cover Sheet.

“**Buyer Assignee**” has the meaning set forth in Section 14.5.

“**Buyer Bid Curtailment**” means the occurrence of both of the following:

(a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Facility, requiring the Party to deliver less Facility Energy from the Facility than the full amount of Energy forecasted in accordance with Section 4.3 to be produced from the Facility for a period of time; and

(b) for the same time period as referenced in (a), Buyer or the SC for the Facility did not submit a Self-Schedule or submitted a Self-Schedule in such a manner that resulted in the notice referenced in (a), in each case, for the MWhs subject to the reduction.

If the Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any Facility Energy that was
not generated or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

“Buyer Curtailment Order” means the instruction from Buyer to Seller to reduce Facility Energy from the Facility by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event affecting the Facility and/or Curtailment Order.

“Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces Facility Energy from the Facility pursuant to or as a result of (a) a Buyer Bid Curtailment, (b) a Buyer Curtailment Order, or (c) a Buyer Default hereunder which directly causes Seller to be unable to deliver Energy to the Delivery Point; provided, the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up and Seller shall not be required to ramp up faster than the applicable Ramp Rate Period corresponding to the applicable Buyer Curtailment Period.

“Buyer Default” means an Event of Default of Buyer.

“Buyer’s Indemnified Parties” has the meaning set forth in Section 18.2.

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.8(a).

“CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.

“CAISO Certification” means the certification and testing requirements for a generating unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for PMAX and PMIN associated with such generating units, that are applicable to the Facility.

“CAISO Charges Invoice” has the meaning set forth in Exhibit D.

“CAISO Commercial Operation” has the meaning of “Commercial Operation” set forth in the CAISO Tariff.

“CAISO Grid” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by FERC.

“California Renewables Portfolio Standard” or “RPS” means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, inter alia, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.
“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the Delivery Point at a particular moment and that can be purchased, sold or conveyed under CAISO or CPUC market rules, including Resource Adequacy Benefits.

“Capacity Damages” has the meaning set forth in Exhibit B.

“CEC” means the California Energy Commission or its successor agency.

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

“CEC Precertification” means that the CEC has issued a precertification for the Facility indicating that the planned operations of the Facility would comply with applicable CEC requirements for CEC Certification and Verification.

“Change of Control” means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; provided, in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

“COD Certificate” has the meaning set forth in Exhibit B.

“Cold Curtailment” means a curtailment that results in the Facility generating zero (0) MWhs for greater than or equal to 12 hours.

“Commercial Operation” has the meaning set forth in Exhibit B.

“Commercial Operation Date” means the date Commercial Operation is achieved.

“Commercial Operation Delay Damages” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) ninety (90).

“Compliance Actions” has the meaning set forth in Section 3.12(a).
“Compliance Expenditure Cap” has the meaning set forth in Section 3.12.

“Confidential Information” has the meaning set forth in Section 18.1.

“Consent to Collateral Assignment” has the meaning set forth in Section 14.2.

“Construction Start” has the meaning set forth in Exhibit B.

“Construction Start Date” has the meaning set forth in Exhibit B.

“Contract Term” has the meaning set forth in Section 2.1.

“Contract Year” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

“Cover Sheet” means the cover sheet to this Agreement, which is incorporated into this Agreement.

“COVID-19” means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat such disease.

“CPM Adjustment Factor” means, for any RA Shortfall Month, the percentage for the corresponding calendar month set forth in Exhibit P.

“CPM Price” has the meaning set forth in Section 3.8(b).

“CPM Soft Offer Cap” has the meaning set forth in the CAISO Tariff.

“CPUC” means the California Public Utilities Commission, or successor entity.

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“Cure Plan” has the meaning set forth in Section 11.1(b)(iii).

“Curtailment Order” means any of the following:
(a) CAISO orders, directs, alerts, or provides notice to a Party, to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected, or (iii) in response to an Energy oversupply or potential Energy oversupply, and Buyer or the SC for the Facility submitted a Self-Schedule for the MWhs curtailed corresponding to the MWhs in the VER forecast for the Facility during the relevant time period;

(b) a curtailment ordered by the Transmission Provider for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider’s electric system integrity or the integrity of other systems to which the Transmission Provider is connected;

(c) a curtailment ordered by CAISO or the Transmission Provider due to a Transmission System Outage; or

(d) a curtailment in accordance with Seller’s obligations under its Interconnection Agreement with the Transmission Provider or distribution operator.

“Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailment Order; provided, the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

“Daily Delay Damages” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

“Damage Payment” means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount as set forth in Section 11.3(a).

“Day-Ahead Forecast” has the meaning set forth in Section 4.3(c).

“Day-Ahead Market” has the meaning set forth in the CAISO Tariff.

“Day-Ahead Schedule” has the meaning set forth in the CAISO Tariff.

“Deemed Delivered Energy” means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Facility Meter, but that is not produced by the Facility during a Buyer Curtailment Period, which amount shall be equal to the Real-Time Forecast (of the hourly expected Facility Energy produced by the Facility) provided pursuant to Section 4.3(d) for the period of time during the Buyer Curtailment Period (or other relevant period), less the amount of Facility Energy delivered to the Delivery Point during the Buyer Curtailment Period (or other relevant period); provided, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).
“**Defaulting Party**” has the meaning set forth in Section 11.1(a).

“**Deficient Month**” has the meaning set forth in Section 4.8(e).

“**Delay Damages**” means Daily Delay Damages and Commercial Operation Delay Damages.

“**Delivery Point**” has the meaning set forth in Exhibit A.

“**Delivery Term**” shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

“**Development Cure Period**” has the meaning set forth in Exhibit B.

“**Development Security**” means (a) cash or (b) a Letter of Credit in the amount specified for the Development Security on the Cover Sheet.

“**Disclosing Party**” has the meaning set forth in Section 18.2.

“**Early Termination Date**” has the meaning set forth in Section 11.2(a).

“**Effective Date**” has the meaning set forth on the Preamble.

“**Effective Flexible Capacity**” or “**EFC**” means the effective flexible capacity (in MWs) of the Facility pursuant to the counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff, which such flexible capacity may be used to satisfy Flexible RAR.

“**Emission Reduction Credits**” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby a district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

“**Electrical Losses**” means all transmission or transformation losses between the Facility and the Delivery Point associated with delivery of Facility Energy.

“**Eligible Renewable Energy Resource**” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

“**Energy**” means electrical energy, measured in kilowatt-hours, megawatt-hours, or multiple units thereof.

“**Energy Replacement Damages**” has the meaning set forth in Section 4.7.

“**Event of Default**” has the meaning set forth in Section 11.1.
“Environmental Costs” means costs incurred in connection with the acquiring and maintaining all environmental permits and licenses for the Facility, and the Facility’s compliance with all applicable environmental laws, rules and regulations, including without limitation capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Facility, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the Site, and the decontamination or remediation, on or off the Site, necessitated by the introduction of such hazardous substances on the Site.

“Excess MWh” has the meaning set forth in Exhibit C.

“Expected Commercial Operation Date” has the meaning set forth on the Cover Sheet.

“Expected Construction Start Date” has the meaning set forth on the Cover Sheet.

“Expected Energy (Total)” means the total quantity of Energy (including Energy that qualifies under California Senate Bill 1383) that Seller expects to be able to deliver to Buyer from the Facility during each Contract Year, which for each Contract Year is the quantity specified on the Cover Sheet as “Total Expected Energy (including California Senate Bill 1383 Energy) (MWh)”, which amount shall be adjusted proportionately to the reduction from Guaranteed Capacity to Installed Capacity pursuant to Section 5(a) of Exhibit B, if applicable.

“Facility” means the biomass generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Facility Energy to the Delivery Point.

“Facility Energy” means the delivered Energy during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use, as measured by the Facility Meter, plus any amount of SB 1383 Facility Energy in excess of the limits set forth in Section (b)(ii) of Exhibit C.

“Facility Engineering Assessment” has the meaning set forth in Section 2.2(l).

“Facility Meter” means the CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Facility Energy. Without limiting Seller’s obligation to deliver Facility Energy to the Delivery Point, the Facility Meter will be located, and Facility Energy will be measured, at the low voltage side of the main step-up transformer and will be subject to adjustment to measure Facility Energy at the Delivery Point in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses.

“FERC” means the Federal Energy Regulatory Commission or any successor government agency.
“Fifteen Minute Market” or “FMM” has the meaning set forth in the CAISO Tariff.

“Financial Close” means (a) Seller and/or one of its Affiliates has obtained debt and/or equity financing commitments from one or more Lenders sufficient to construct the Facility (including any reconstruction and refurbishment) and provide Development Security required to be provided by Seller pursuant to this Agreement, including such financing commitments from Seller’s owner(s) or (b) to the extent Seller is balance sheet financing, funds necessary for project construction (including any reconstruction and refurbishment) and providing Development Security required to be provided by Seller pursuant to this Agreement have been set aside.

“Flexible Capacity” means, with respect to any particular Showing Month, the number of MWs of Product which are eligible to satisfy Flexible RAR.

“Flexible RAR” means the flexible capacity requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

“Force Majeure Event” has the meaning set forth in Section 10.1.

“Forced Facility Outage” means an unexpected failure of one or more components of the Facility that prevents Seller from generating Energy or making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

“Forecasted Product” has the meaning set forth in Section 4.3(b).

“Forward Certificate Transfers” has the meaning set forth in Section 4.8(a).

“Full Capacity Deliverability Status” or “FCDS” has the meaning set forth in the CAISO Tariff.

“Future Environmental Attributes” means any and all Green Attributes that become recognized under applicable Law after the Effective Date (and not before the Effective Date), notwithstanding the penultimate sentence of the definition of “Green Attributes” herein. Future Environmental Attributes do not include any Energy, Renewable Energy Incentives, Capacity Attributes, Flexible RAR, or Tax Credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant
markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes, Future Environmental Attributes (to the extent such Future Environmental Attributes exist at the time “Gains” are applicable under this Agreement), Flexible Capacity, Renewable Energy Incentives, and Capacity Attributes. A Party shall use commercially reasonable efforts to obtain third-party information in order to determine Gains and shall use information available to it internally for such purposes only if it is unable, after using commercially reasonable efforts, to obtain relevant third-party information.

“GHG Regulations” means Title 17, Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 10 (Climate Change), Article 5 (Emissions Cap), Sections 95800 to 96023 of the California Code of Regulations, as amended or supplemented from time to time.

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO and the CPUC; provided, “Governmental Authority” shall not in any event include any Party.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled (including under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto)), attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (3) the reporting rights to such avoided emissions, such as Green Tag Reporting Rights. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, or (iii) Emission Reduction Credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. Green Attributes under the preceding definition are limited to Green Attributes that exist under applicable Law as of the Effective Date.

“Green Tag Reporting Rights” means the right of a purchaser of renewable energy to report ownership of accumulated Green Tags in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.
“Green Tags” means a unit accumulated on a MWh basis where one (1) represents the Green Attributes associated with one (1) MWh of Facility Energy.

“Green-e Certified” means the Green Attributes provided to Buyer pursuant to this Agreement are certified under the Green-e Energy National Standard.

“Green-e Energy National Standard” means the Green-e Renewable Energy Standard for Canada and the United States (formerly Green-e Energy National Standard) version 3.4, updated November 12, 2019, as may be further amended from time to time.

“Green-e Energy National Standard” means the Green-e Renewable Energy Standard for Canada and the United States (formerly Green-e Energy National Standard) version 3.4, updated November 12, 2019, as may be further amended from time to time.

“Greenhouse Gas” or “GHG” has the meaning set forth in the GHG Regulations or in any other applicable Laws.

“Guaranteed Capacity” means the generating capacity of the Facility, as measured in MW AC at the Delivery Point, that Seller commits to install pursuant to this Agreement set forth on the Cover Sheet.

“Guaranteed Commercial Operation Date” has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B and pursuant to a Financing Extension.

“Guaranteed Construction Start Date” has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B and pursuant to a Financing Extension.

“Guaranteed Energy Production” has the meaning set forth in Section 4.7.

“Imbalance Energy” means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Facility Energy deviates from the amount of Scheduled Energy.

“Indemnified Party” has the meaning set forth in Section 16.1.

“Indemnifying Party” has the meaning set forth in Section 16.1.

“Initial Synchronization” means the commencement of Trial Operations (as defined in the CAISO Tariff).

“Installed Capacity” means the actual generating capacity of the Facility, as measured in MW AC at the Delivery Point (i.e., measured at the Facility Meter and adjusted for Electrical Losses to the Delivery Point), that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit H hereto.

“Inter-SC Trade” has the meaning set forth in the CAISO Tariff.

“Interconnection Agreement” means the interconnection agreement entered into by Seller or an Affiliate pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.
“Interconnection Capacity Limit” means the maximum instantaneous amount of Energy that is permitted to be delivered to the Delivery Point under Seller’s Interconnection Agreement, in the amount of 11.5 MW.

“Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

“Interest Rate” has the meaning set forth in Section 8.2.

“IP Indemnity Claim” has the meaning set forth in Section 16.1(b).

“ITC” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.


“Joint Powers Agreement” means that certain Joint Powers Agreement dated June 27, 2017, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“kWh” means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“Law” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“Lender” means, collectively, any Person (a) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (b) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (c) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K, which shall be modified as reasonably requested by Seller.
“Licensed Professional Engineer” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

“Limited Assignment Agreement” has the meaning set forth in Section 14.5.

“Local Capacity Area Resource” has the meaning set forth in the CAISO Tariff.

“Local RAR” means the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority. “Local RAR” may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

“Locational Marginal Price” or “LMP” has the meaning set forth in the CAISO Tariff.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Future Environmental Attributes (to the extent such Future Environmental Attributes exist at the time “Losses” are applicable under this Agreement), Flexible Capacity, Renewable Energy Incentives, Capacity Attributes, and Renewable Energy Incentives. A Party shall use commercially reasonable efforts to obtain third-party information in order to determine Losses and shall use information available to it internally for such purposes only if it is unable, after using commercially reasonable efforts, to obtain relevant third-party information.

“Lost Output” has the meaning set forth in Section 4.7(a).

“Marketable Emission Trading Credits” means emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (42 U.S.C. § 7651b (a) to (f)).

“Material Permits” means all permits required for Seller to commence construction, as set forth on Exhibit R.

“Milestones” means the significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet, subject to extension pursuant to a Financing Extension and pursuant to Section 2.4.
“Monthly Forecast” has the meaning set forth in Section 4.3(b).

“Moody’s” means Moody’s Investors Service, Inc., or its successor.

“MW” means megawatts in alternating current, unless expressly stated in terms of direct current.

“MWh” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“Negative LMP” means, in any Settlement Period or Settlement Interval, the LMP at the Facility’s PNode is less than zero dollars ($0).

“NERC” means the North American Electric Reliability Corporation or any successor entity.

“Net Qualifying Capacity” has the meaning set forth in the CAISO Tariff.

“Network Upgrades” has the meaning set forth in the CAISO Tariff.

“Non-Defaulting Party” has the meaning set forth in Section 11.2.

“Notice” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).

“Operating Restrictions” means those rules, requirements, and procedures set forth on Exhibit U.

“Party” has the meaning set forth in the Preamble.

“Performance Measurement Period” means each Contract Year.

“Performance Security” means (i) cash or (ii) a Letter of Credit in the amount specified for the Development Security on the Cover Sheet.

“Permitted Transferee” means (i) any Affiliate of Seller or (ii) any entity that satisfies, or is controlled by another Person that satisfies, the following requirements:

(a) A tangible net worth of not less than one hundred fifty million dollars ($150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and

(b) At least two (2) years of experience in the ownership and operations of power generation facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.

“Person” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust,
incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“Planned Outage” means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.6(a).

“PNode” has the meaning set forth in the CAISO Tariff.

“Portfolio” means the single portfolio of electrical energy generating or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

“Portfolio Content Category” means PCC1, PCC2 or PCC3, as applicable.

“Portfolio Content Category 1” or “PCC1” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 2” or “PCC2” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 3” or “PCC3” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Financing” means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

“Portfolio Financing Entity” means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

“Product” has the meaning set forth on the Cover Sheet.

“Progress Report” means a report from Seller that includes information with respect to the achievement of Milestones, including the items set forth in Exhibit E.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities in the Western United States, and (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the
desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable safety and reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“PTC” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

“Qualifying Capacity” has the meaning set forth in the CAISO Tariff.

“RA Compliance Showing” means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, an entity is required to make to the CAISO pursuant to the CAISO Tariff, to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to any Governmental Authority.

“RA Deficiency Amount” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.8(b).

“RA Guarantee Date” means the Commercial Operation Date.

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any Showing Month, commencing with the Showing Month that includes the month in which the RA Guarantee Date occurs, during which the Net Qualifying Capacity of the Facility plus any Replacement RA (if applicable) that was included in the Showing Month for Buyer was less than the Qualifying Capacity of the Facility for such month (including any month during the period between the RA Guarantee Date and the first day of the first Showing Month for Buyer which actually includes the Facility’s Net Qualifying Capacity or any Replacement RA, if applicable).

“Ramp Rate Period” means (a) 10 minutes if the Facility is currently generating Energy at the start of the applicable ramp up, (b) 2, if the Facility is not generating Energy at the start of the applicable ramp up, and has not generated Energy for a period of less than or equal to 8 hours prior to the start of the applicable ramp up, (c) 5 hours if the Facility is not generating Energy at the start of the applicable ramp up, and has not generated Energy for a period of greater than 8 hours but less than 12 hours prior to the start of the applicable ramp up, and (d) 12 hours if the Facility is not generating Energy at the start of the applicable ramp up, and has not generated Energy for a period of greater than or equal to 12 hours prior to the start of the applicable ramp up.

“Real-Time Forecast” has the meaning set forth in Section 4.3(d).

“Real-Time Market” has the meaning set forth in the CAISO Tariff.
“Real-Time Price” means the LMP with respect to the Facility for the applicable Settlement Interval. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

“Receiving Party” has the meaning set forth in Section 18.2.

“Reliability Network Upgrades” has the meaning set forth in the CAISO Tariff.

“Remedial Action Plan” has the meaning set forth in Section 2.4.

“Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute, Future Environmental Attribute, or Capacity Attribute.

“Renewable Rate” has the meaning set forth on the Cover Sheet; provided, if the officer’s certificate provided by Seller pursuant to Section 2.2(k) states that Seller will claim a Tax Credit rate for the Facility that is higher than Seller’s assumed Tax Credit rate as set forth on the Cover Sheet, the Renewable Rate shall be reduced by $ for each $0.0005/kWh that the PTC rate Seller indicates in such certificate Seller will claim is above $0.027/kWh.

“Replacement Energy” has the meaning set forth in Exhibit G-1.

“Replacement Green Attributes” has the meaning set forth in Exhibit G-1.

“Replacement Product” has the meaning set forth in Exhibit G-1.

“Replacement RA” means resource adequacy benefits equivalent to Resource Adequacy Benefits that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and located within SP 15 TAC Area and, to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, described as a Local Capacity Area Resource.

“Requested Confidential Information” has the meaning set forth in Section 18.2.

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and shall include Flexible Capacity and any local, zonal or otherwise locational attributes associated with the Facility.
“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements applicable to an entity as established by the CAISO pursuant to the CAISO Tariff, by the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

“Resource Adequacy Resource” shall have the meaning used in Resource Adequacy Rulings.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

“SB 1383 Deemed Delivered Energy” means the amount of SB 1383 Energy expressed in MWh that the Facility would have produced and delivered to the Facility Meter, but that is not produced by the Facility during a Buyer Curtailment Period, which amount shall be equal to the Real-Time Forecast (of the hourly expected SB 1383 Facility Energy produced by the Facility) provided pursuant to Section 4.3(d) for the period of time during the Buyer Curtailment Period (or other relevant period), less the amount of SB 1383 Facility Energy delivered to the Delivery Point during the Buyer Curtailment Period (or other relevant period); provided, if the applicable difference is negative, the SB 1383 Deemed Delivered Energy shall be zero (0).

“SB 1383 Energy Replacement Damages” has the meaning set forth in Section 4.7(b).

“SB 1383 Energy Shortfall” has the meaning set forth in Section 4.7(b).

“SB 1383 Expected Energy” means the quantity of Energy that qualifies under California Senate Bill 1383 Seller expects to be able to deliver to Buyer from the Facility during each Contract Year, which for each Contract Year is the quantity specified on the Cover Sheet as “Expected Energy that qualifies under California Senate Bill 1383 (MWh)”, which amount shall be adjusted (a) proportionately to the reduction from Guaranteed Capacity to Installed Capacity pursuant to Section 5(a) of Exhibit B, if applicable, and (b) as follows:

(i) Buyer shall have the right to reduce the SB 1383 Expected Energy by providing not less than one (1) year’s Notice to Seller;

(ii) Either Party may request to increase the SB 1383 Expected Energy by providing Notice of such request to the other Party, and Seller shall prepare (if not already included in such Notice from Seller) a proposal for the pricing and volume of such increased amount of SB 1383 Expected Energy; provided, either Party may, in its sole discretion, accept or reject the final terms of such increased SB 1383 Expected Energy; and
(iii) In the event the Parties agree to increase the SB 1383 Expected Energy pursuant to Section (b)(ii) of this definition, Seller shall have the right to reduce the SB 1383 Expected Energy by providing not less than one (1) year’s Notice to Buyer; provided, Seller may not reduce the SB 1383 Expected Energy pursuant to this Section (b)(iii) to an amount less than the amount of SB 1383 Expected Energy as of the Effective Date (except as may be reduced by Section (a) of this definition).

“SB 1383 Facility Energy” means the delivered Energy that qualifies under California Senate Bill 1383 during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use, calculated by multiplying the Facility Energy by the quotient of (a) the amount of SB 1383-qualified fuel for the applicable period, divided by (b) the total facility fuel for the applicable period (measured tons and distinguished by tons type, as set forth in the Biomass Conversion Facility Report).

“SB 1383 Lost Output” has the meaning set forth in Section 4.7(b).

“SB 1383 Renewable Rate” has the meaning set forth on the Cover Sheet; provided, if the officer’s certificate provided by Seller pursuant to Section 2.2(k) states that Seller will claim a Tax Credit rate for the Facility that is higher than Seller’s assumed Tax Credit rate as set forth on the Cover Sheet, the Renewable Rate shall be reduced by a maximum of $MWh for each $0.0005/kWh that the PTC rate Seller indicates in such certificate Seller will claim is above $0.027/kWh.

“Schedule” has the meaning set forth in the CAISO Tariff, and “Scheduled” and “Scheduling” have a corollary meaning.

“Scheduled Energy” means the Facility Energy scheduled by the Scheduling Coordinator that clears under the applicable CAISO market based on the final Day-Ahead Schedule (as defined in the CAISO Tariff), FMM Schedule (as defined in the CAISO Tariff), and/or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

“Scheduling Coordinator” or “SC” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time to time.

“Security Interest” has the meaning set forth in Section 8.9.

“Self-Schedule” has the meaning set forth in the CAISO Tariff.

“Seller” has the meaning set forth on the Cover Sheet.

“Seller’s WREGIS Account” has the meaning set forth in Section 4.8(a).

“Semi-Cold Curtailment” means a curtailment that results in the Facility generating zero MWhs for more than 8 hours but less than 12 hours.
“**Settlement Amount**” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars ($0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages, unless such damages are part of a Party’s Gains, Losses and Costs as those terms are explicitly defined herein.

“**Settlement Interval**” has the meaning set forth in the CAISO Tariff.

“**Settlement Period**” has the meaning set forth in the CAISO Tariff.

“**Shared Facilities**” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

“**Showing Month**” shall be the calendar month of the Delivery Term that is the subject of the RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly RA Compliance Showing made in June is for the Showing Month of August.

“**Site**” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer; provided, any such update to the Site that includes real property that was not originally contained within the Site boundaries described in Exhibit A shall be subject to Buyer’s approval of such updates in its sole discretion.

“**Site Control**” means that, for the Contract Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

“**SP-15**” means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

“**Station Use**” means the Energy (including Energy produced by the Facility) that is used within the Facility to power the lights, motors, temperature control systems, control systems and other electrical loads that are necessary for operation of the Facility.

“**Supply Chain Code**” has the meaning in Exhibit Q.

“**System Emergency**” means (a) any condition that requires, as determined and declared by CAISO or the Transmission Provider, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability or (b)
a “System Emergency” or any equivalent term, as defined in the CAISO Tariff or in the Interconnection Agreement.

“Tax” or “Taxes” means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“Tax Credits” means the PTC, ITC and any other state, local and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit specific to the production of renewable energy and/or investments in renewable energy facilities.

“Terminated Transaction” has the meaning set forth in Section 11.2(a).

“Termination Payment” has the meaning set forth in Section 11.3(b).

“Test Energy” means Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Energy to the CAISO and (ii) the first date that the Transmission Provider informs Seller in writing that Seller has conditional or temporary permission to operate in parallel with the CAISO Grid, and (b) ending upon the occurrence of the Commercial Operation Date.

“Test Energy Rate” has the meaning set forth in Section 3.6.

“Transmission Provider” means any entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities for the purpose of transmitting or transporting the Facility Energy from the Delivery Point.

“Transmission System” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“Transmission System Outage” means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller’s actions or inactions and that prevents Buyer or the CAISO (as applicable) from receiving Facility Energy onto the Transmission System.

“Uninstructed Imbalance Energy” has the meaning set forth in the CAISO Tariff.

“Ultimate Parent” means The T and R Fry Family Trust, a California entity.

“Variable Energy Resource” or “VER” has the meaning set forth in the CAISO Tariff.

“WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

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“WREGIS Certificate Deficit” has the meaning set forth in Section 4.8(e).

“WREGIS Certificates” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of May 1, 2018, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 Rules of Interpretation. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person’s successors and permitted assigns;

(g) the terms “include” and “including” mean “include or including (as applicable) without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;
(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression “and/or” when used as a conjunction shall connote “any or all of”;

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein (“Contract Term”); provided, subject to Buyer’s obligations in Section 3.6, Buyer’s obligations to pay for or accept any Product are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2.

(c) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years.
following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

2.2 **Conditions Precedent.** The Delivery Term shall not commence until Seller completes to Buyer’s reasonable satisfaction each of the following conditions, which Buyer shall, if submitted by Seller within five (5) Business Days of the expected Commercial Operation Date, review and either accept or provide Notice stating in reasonably detail the basis for Buyer’s rejection thereof within five (5) Business Days of receipt thereof:

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H;

(b) A Participating Generator Agreement (as defined in the CAISO Tariff) and a Meter Service Agreement for CAISO Metered Entities (as defined in the CAISO Tariff) between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller and the Transmission Provider shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits required for the operation of the Facility have been obtained and all conditions thereof that are required to be satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect;

(e) Seller has received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);

(f) Seller has completed CAISO Certification for the Facility;

(g) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(h) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8;

(i) Seller has taken all actions and executed all documents and instruments, required to authorize Buyer (or its designated agent) to act as Scheduling Coordinator under this Agreement, and Buyer (or its designated agent) is authorized to act as Scheduling Coordinator;
(j) The Facility is providing Resource Adequacy Benefits to Buyer for the month in which Delivery Term commences;

(k) Seller has delivered to Buyer an officer’s certificate stating that (i) Seller is in compliance with Section 2.3(b) as of the date of the applicable certification, and (ii) the Tax Credit and applicable rate which Seller claims will apply for the Facility and/or Facility Energy;

(l) Seller shall have delivered to Buyer an engineering assessment from a Licensed Professional Engineer, using standard practices in renewable energy project financing, demonstrating that the Facility (i) has a fifty percent (50%) probability (“P50”) during each Contract Year of delivering at least 1,825 MWh (i.e. 1 MW x 5h x 365) of Facility Energy during the 5-hour period from 5:00 p.m. to 10:00 p.m. PPT for every one (1) MW of NQC of the Facility; provided that such P50 assessment shall only be required to the extent Buyer reasonably believes Buyer is required to obtain such P50 assessment in connection with the replacement of the Diablo Canyon facility, and (ii) has an expected average annual capacity factor of eighty percent (80%) or more, subject to the Facility being Scheduled appropriately (the “Facility Engineering Assessment”); and

(m) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Delay Damages.

2.3 Development; Construction; Progress Reports.

(a) Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller’s construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility. Seller shall provide to Buyer a Facility Engineering Assessment upon the earlier of (i) the Commercial Operation Date or (ii) thirty (30) days following a written request from Buyer; provided, Seller shall not be obligated to provide more than one Facility Engineering Assessment.

(b) Seller shall ensure that all materials, products and components installed, since the Effective Date of this Agreement, in constructing, installing and operating the Facility throughout the Term shall be in compliance with the Supply Chain Code. Seller shall comprehensively implement due diligence procedures for its and its Affiliate’s suppliers, subcontractors and other participants in its supply chains, to comply with the Supply Chain Code. Seller shall notify Buyer as soon as it becomes aware of any breach, or potential breach, of its obligations under this Section 2.3(b).
Buyer shall have the right, at Buyer’s sole expense, to retain an independent auditor to audit Seller’s compliance with the requirements of Section 2.3(b).

2.4 **Remedial Action Plan.** If Seller misses a Milestone (other than Financial Close) by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the Milestone completion date, a remedial action plan (“Remedial Action Plan”), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller’s detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

**ARTICLE 3**

**PURCHASE AND SALE**

3.1 **Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer shall purchase all the Product produced by or associated with the Facility at the Renewable Rate and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product; provided, no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer shall have exclusive rights to offer, bid, or otherwise submit the Product, and/or any component thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues. Seller shall reasonably cooperate with Buyer in transferring and/or assigning credits or benefits related to any Facility Energy (including SB 1383 Facility Energy) to which Buyer is entitled pursuant to this Agreement to third parties, including by providing an officer’s certificate (under penalty of perjury) to such transferees certifying that the relevant biomass feedstock was received from a qualifying solid waste source. If such certification is inadequate or rejected by any Governmental Authority by whom such certification is required for such transferee’s compliance with Cal. Code Regs Title 14, §18993.2 due to failure of the fuel used to produce such Facility Energy to qualify pursuant thereto, if Seller is unable to provide documentation satisfactory to such Governmental Authority, then Seller shall reimburse to Buyer (a) the amount of payments made by Buyer in excess of the Renewable Rate (with respect to any SB 1383 Facility Energy, if applicable), and (b) any penalties assessed against such transferee by such Governmental Authority in connection with such disqualified credits or benefits.

3.2 **Sale of Green Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to the Facility Energy. Upon request of Buyer, Seller shall use commercially reasonable efforts to (a) submit, and
receive approval from the Center for Resource Solutions (or any successor that administers the Green-e Certification process), for the Green-e tracking attestations and (b) support Buyer’s efforts to qualify the Green Attributes transferred by Seller as Green-e Certified.

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy may deviate from the amounts thereof scheduled with the CAISO. Following the Commercial Operation Date, to the extent there are such deviations, any costs, liabilities or revenues from such imbalances shall be solely for the account of Seller, except to the extent caused by Buyer or its designated SC’s failure to properly Schedule the Facility, or as otherwise expressly set forth in this Agreement.

3.4 **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller’s sole expense, in Seller’s efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a) and to Section 3.5(b), in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Renewable Rate. Upon Seller’s receipt of Notice from Buyer of Buyer’s intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; provided, the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy.** No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer
shall purchase from Seller all Test Energy and any associated Products on an as-available basis for up to ninety (90) days from the first delivery of Test Energy. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to the Renewable Rate of the Renewable Rate, and zero dollars ($0) per MWh after such initial ninety (90)-day period (the “Test Energy Rate”). The conditions precedent in Section 2.2 are not applicable to the Parties’ obligations under this Section 3.6.

3.7 Capacity Attributes. Seller shall diligently pursue Full Capacity Deliverability Status for the Guaranteed Capacity in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term and subject to Section 3.12, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term and subject to Section 3.12, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide all Resource Adequacy Benefits, including Flexible Capacity, to Buyer. Throughout the Delivery Term, and subject to Section 3.12, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) For the duration of the Delivery Term, and subject to Section 3.12, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

(d) If Seller anticipates that it will have any RA Deficiency Amounts in a Showing Month, Seller may provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such Showing Month, minus (Y) the expected Net Qualifying Capacity of the Facility with respect to such Showing Month, provided that (a) the amount of Replacement RA in any Contract Year shall not exceed twenty-five percent (25%) of the annual total amount of Resource Adequacy Benefits expected to be provided by the Facility, and (b) any intended Replacement RA is communicated by Seller to Buyer in a Notice substantially in the form of Exhibit M at least fifty (50) Business Days before the applicable Showing Month for the purpose of including in Buyer’s RA Compliance Showing for such Showing Month.

3.8 Resource Adequacy Failure.

(a) RA Deficiency Determination. For each RA Shortfall Month Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages and/or provide Replacement RA, as set forth in Section 3.8(b), as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer.

(b) RA Deficiency Amount Calculation. The “RA Deficiency Amount” shall equal the product of (i) the difference, expressed in kW, of (A) the Qualifying Capacity of the Facility (or, if Seller has not obtained certification from the CAISO of the Facility’s Qualifying Capacity, the amount of Qualifying Capacity the Facility would reasonably be estimated to qualify for at the time it is first interconnected into the CAISO transmission system) and (B) the Qualifying Capacity of the Facility in that Showing Month.
for, based on the CPUC-adopted qualifying capacity methodologies then in effect), minus (B) the Net Qualifying Capacity of the Facility plus any Replacement RA that was included in the Showing Month for Buyer (or, if Seller does not have a Net Qualifying Capacity and did not provide any Replacement RA that was shown in a Showing Month for Buyer (other than due to Buyer’s action or inaction), the Net Qualifying Capacity of the Facility shall be deemed to be zero (0) MW), multiplied by (ii) the product of (X) the CPM Soft Offer Cap (or its successor) multiplied by (Y) the CPM Adjustment Factor (“CPM Price”).

3.9 **CEC Certification and Verification.** Subject to Section 3.12 and in accordance with the timing set forth in this Section 3.9, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller’s application for CEC Certification and Verification for the Facility.

3.10 **Eligibility.** Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

3.11 **California Renewables Portfolio Standard.** Subject to Section 3.12, Seller shall also take all other actions necessary to ensure that the Facility Energy is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

3.12 **Compliance Expenditure Cap.** If a change in Law occurring after the Effective Date has increased Seller’s cost to comply with Seller’s obligations under this Agreement that are made subject to this Section 3.12, including with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of Green Attributes and Capacity Attributes (as applicable), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at Twenty-Five Thousand Dollars ($25,000) per MW of Guaranteed Capacity (“Compliance Expenditure Cap”).

   (a) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the “Compliance Actions.”
(b) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “Accepted Compliance Costs”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller (and Buyer shall be deemed to have waived any part thereof that is not an Accepted Compliance Cost). If Buyer does not respond to a Notice given by Seller under this Section 3.12 within sixty (60) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, such Compliance Actions until such time as Buyer agrees to pay such Accepted Compliance Costs.

(d) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

3.13 Project Configuration. In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller shall discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; provided, neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties as set forth in a written agreement.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 Delivery.

(a) Energy. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility’s operations. Buyer shall be responsible for all costs, charges and penalties, (except as otherwise set forth in this Agreement), if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and any resale or use of the Product by Buyer. The Facility Energy will be scheduled with the CAISO by Buyer (or Buyer’s designated Scheduling Coordinator) in accordance with Exhibit D.
(b) **Green Attributes.** All Green Attributes associated with Test Energy and the Facility Energy during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

(c) **Energy Products.** If, at any time during the Contract Term, Buyer requests Seller to provide any new or different Energy-related products or Ancillary Services that may become recognized from time to time in the CAISO market, and Seller is able to provide any such product from the Facility without material adverse effect (including any obligation to incur more than *de minimis* costs or liabilities) on Seller or the Facility or Seller’s obligations or liabilities under this Agreement, then Seller shall use commercially reasonable efforts to coordinate with Buyer to provide such product. If provision of any such new product would have a material adverse effect (including any obligation to incur more than *de minimis* costs or liabilities) on Seller or the Facility or Seller’s obligations or liabilities under this Agreement, then Seller shall be obligated to provide such product only if the Parties first execute an amendment to this Agreement with respect to such product that is mutually acceptable to both Parties.

4.2 **Title and Risk of Loss.**

(a) **Energy.** Title to and risk of loss related to the Facility Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) **Green Attributes.** Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 **Forecasting.** Seller shall provide the forecasts described below. Seller shall use commercially reasonable efforts to forecast accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer’s designee).

(a) **Annual Forecast of Facility Energy.** No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month’s average-day expected Facility Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

(b) **Monthly Forecast of Facility Energy and Available Capacity.** No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected (i) available capacity of the Facility and (ii) Energy (items (i)-(ii) collectively referred to as the “**Forecasted Product**”),
for each day of the following month in a form substantially similar to Exhibits F-1 and F-2, as applicable (“Monthly Forecast”).

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of the hourly expected Forecasted Product, in each case, for each hour of the immediately succeeding day (“Day-Ahead Forecast”). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day, and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller’s best estimate of the hourly expected Forecasted Product. Such Day-Ahead Forecasts shall be sent to Buyer’s on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only, Buyer shall rely on any Real-Time Forecast or the Monthly Forecast or Buyer’s best estimate based on information reasonably available to Buyer.

(d) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of one (1) MW / one (1) MWh or more in the hourly expected Forecasted Product (“Real-Time Forecast”), in each case, whether due to a Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting schedules to the CAISO in accordance with the rules for participation in the Real-Time Market or as otherwise provided pursuant to this Section 4.3(d). If the Forecasted Product changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts of Facility Energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in any Forecasted Product, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Force Majeure Event, Curtailment Order, or other instruction of a Governmental Authority or Transmission Provider that results in changes from the Day-Ahead Forecast of one (1) MW / one (1) MWh or more in the hourly expected Forecasted Product that occurs after the Real-Time Market deadline, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of such event. Seller shall inform Buyer of any developments that are reasonably likely to affect either the duration of such outage or the availability of the Facility during or after the end of such outage. Such Real-Time Forecasts shall be communicated in a method acceptable to Buyer, provided that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail to Buyer. Seller shall not be required to notify Buyer of any changes to a forecast based on a Buyer Curtailment Order or Buyer Bid Curtailment.

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer’s on-duty Scheduling Coordinator of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.
(f) **Forecasting Failure Damages.** In the event that the CAISO revises its Tariff so that Uninstructed Imbalance Energy with respect to the Facility would no longer be settled based on the Real-Time Price, the Parties shall negotiate in good faith to amend this Agreement to ensure that, (i) during periods in which (a) prices are positive, (b) the price used to settle Uninstructed Imbalance Energy is lower than the Real-Time Price, and (c) actual Facility Energy exceeds the Settlement Interval Scheduled Energy, that Buyer is not prevented from capturing the amount by which the Real-Time Price exceeds the price used to settle Uninstructed Imbalance Energy due to a failure by Seller to submit a Real-Time Forecast in accordance with Section 4.3(d) of this Agreement, and, (ii) during periods in which (x) prices are negative and (y) actual Facility Energy is lower than the Settlement Interval Scheduled Energy, Seller compensates Buyer for any charges incurred by Buyer for the production of Energy from the Facility that could have reasonably been avoided if Seller had submitted a Real-Time Forecast in accordance with Section 4.3(d).

(g) **CAISO Tariff Requirements.** Seller shall comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer’s SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 **Dispatch Down/Curtailment.**

(a) **General.** Seller agrees to reduce the amount of Facility Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment:

(b) **Buyer Curtailment.** Subject to Section 4.4(a), Buyer shall have the right to order Seller to curtail deliveries of Facility Energy through Buyer Curtailment Orders:

(c) **Failure to Comply.** If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, in each case subject to Section 4.4(a), then, for each MWh of Facility Energy that is delivered by the Facility to the Delivery Point that is in excess of the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller’s failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, in each case, that are not related to any excess MWhs.
delivered to reasonably comply with the limitation of the Facility set out in the Operating Restrictions. Seller shall not be required to deliver any Product following a Buyer Curtailment Order, Buyer Bid Curtailment, or Curtailment Order for any Settlement Interval falling within the Ramp Rate Period with respect to such Buyer Curtailment Order, Buyer Bid Curtailment, or Curtailment Order.

(d) Seller Equipment Required for Operating Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond to and follow operating instructions from the CAISO and Buyer’s SC, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by Buyer from time to time in accordance with this Agreement and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the methodologies applicable to the Facility and used to transmit such instructions. If at any time during the Delivery Term, Seller’s facilities, communications links or other equipment, protocols or practices are not in compliance with methodologies applicable to the Facility and directed by Buyer, Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller’s facilities, communications links or other equipment, protocols or practices are not in compliance with applicable methodologies. A Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.5 Station Use. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (i) Seller is responsible for providing all Energy to serve Station Use (including paying the cost of any Energy used to serve Station Use), (ii) the supply of such Station Use shall not be deemed a violation of this Agreement, (provided, Seller shall indemnify and hold harmless Buyer from any and all costs, penalties, charges or other adverse consequences that result from Energy supplied for Station Use by any means other than retail service from the applicable utility, and shall take any additional measures to ensure Station Use is supplied by the applicable utility’s retail service if necessary to avoid any such costs, penalties, charges or other adverse consequences), and (iii) Station Use may not be supplied from Facility Energy (provided, Seller may supply Station Use from Energy produced by the Facility so long as no such Energy is recorded as Facility Energy by the Facility Meter to the extent permitted by applicable Laws and the applicable retail utility tariff).

4.6 Facility Maintenance. Without limiting Section 3.1 or Exhibits G-1 and G-2:

(a) Seller shall provide to Buyer written schedules for Planned Outages for each Contract Year no later than thirty (30) days prior to the first day of the applicable Contract Year. Buyer may provide comments no later than ten (10) days after receiving any such schedule, and Seller shall in good faith take into account any such comments. Seller shall deliver to Buyer the final updated schedule of Planned Outages no later than ten (10) days after receiving Buyer’s comments. Seller shall be permitted to reduce deliveries of Product during any period of such Planned Outages.
If reasonably required in accordance with Prudent Operating Practices, Seller may perform maintenance at a different time than maintenance scheduled pursuant to Section 4.6(a)(i). Except for emergency maintenance performed in accordance with Prudent Operating Practices, Seller shall provide Notice to Buyer within the time period determined by the CAISO for the Facility, as a Resource Adequacy Resource that is subject to the Availability Standards (as defined in the CAISO Tariff), to qualify for an “Approved Maintenance Outage” under the CAISO Tariff (or such shorter period as may be reasonably acceptable to Buyer), and Seller shall (A) reimburse Buyer for any cost Buyer incurs in connection therewith (including replacement Capacity Attributes as required by the CAISO), and (B) limit maintenance repairs performed pursuant to this Section 4.6(a) to periods when Buyer does not reasonably believe the Facility will be dispatched.

(c) Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Facility shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its sole discretion. In the event that Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all commercially reasonable efforts to reschedule such Planned Outage.

4.7 Guaranteed Energy Production.

(a) During each Performance Measurement Period, Seller shall deliver to Buyer an amount of Facility Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below). “Guaranteed Energy Production” means an amount of Facility Energy (which, for purposes of this Section 4.7(a), shall include Lost Output), as measured in MWh, equal to ninety-five percent (95%) of the annual Expected Energy (Total) for the applicable Contract Year constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Buyer failure to perform any obligation under this Agreement that directly prevents Seller from being able to deliver Facility Energy to the Delivery Point. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the sum of (i) any Deemed Delivered Energy, plus (ii) Facility Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering, or otherwise was not delivered, to Buyer by reason of any Force Majeure Events, System Emergency, Transmission System Outage, Curtailment Periods or Seller ceasing delivery of Facility Energy to Buyer pursuant to Section 11.2(d) due to a Buyer Event of Default and not otherwise constituting Deemed Delivered Energy (“Lost Output”). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G-1 (“Energy Replacement Damages”); provided, Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G-1) delivered to Buyer at SP 15 EZ Gen Hub under a Day-Ahead Schedule as an IST within ninety (90) days after the conclusion of the applicable Performance Measurement Period (A) upon a schedule reasonably acceptable to Buyer, (B) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement, and (C) not to exceed ten percent (10%) of the Expected Energy (Total) for the previous Contract Year.

(b) During each Performance Measurement Period, Seller shall deliver to Buyer an amount of SB 1383 Facility Energy (which, for purposes of this Section 4.7(b), shall
include SB 1383 Lost Output), not including any Excess MWh, equal to no less than the Guaranteed SB 1383 Energy Production (as defined below). “Guaranteed SB 1383 Energy Production” means an amount of SB 1383 Facility Energy, as measured in MWh, equal to one hundred percent (100%) of the annual SB 1383 Expected Energy for the applicable Contract Year constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed SB 1383 Energy Production during any Performance Measurement Period only to the extent of any Buyer failure to perform any obligation under this Agreement that directly prevents Seller from being able to deliver SB 1383 Facility Energy to the Delivery Point. For purposes of determining whether Seller has achieved the Guaranteed SB 1383 Energy Production, Seller shall be deemed to have delivered to Buyer the sum of (i) any SB 1383 Deemed Delivered Energy, plus (ii) SB 1383 Facility Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Transmission System Outage or Curtailment Periods (“SB 1383 Lost Output”). For purposes of this Section 4.7(b), “SB 1383 Energy Shortfall” shall equal, without duplication, (A) an amount equal to the Guaranteed SB 1383 Energy Production for the prior Performance Measurement Period minus (B) the amount of SB 1383 Facility Energy, not including any Excess MWh, that was delivered to Buyer during the prior Performance Measurement Period minus (C) the amount of SB 1383 Lost Output during the prior Performance Measurement Period. If Seller fails to achieve the Guaranteed SB 1383 Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G-2 (“SB 1383 Energy Replacement Damages”).

4.8 WREGIS. Seller shall, at its sole expense, but subject to Section 3.12, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer’s sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.8(g), provided that Seller fulfills its obligations under Sections 4.8(a) through (g) below. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS (“Seller’s WREGIS Account”), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using “Forward Certificate Transfers” (as described in the WREGIS Operating Rules) from Seller’s WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller (“Buyer’s WREGIS Account”). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller’s WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller’s WREGIS Account to Buyer’s WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Facility Energy
generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Facility Energy for such calendar month as evidenced by the Facility’s metered data.

(d) Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “WREGIS Certificate Deficit” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month (“Deficient Month”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or is the result of Seller taking any action or failing to take any action, in each case, in contravention of its obligations under this Agreement, then the amount of Facility Energy in the Deficient Month shall be reduced by three (3) times the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; provided, such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G-1) within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer, and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller has not reimbursed Buyer. Without limiting Seller’s obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

(g) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(h) Seller warrants that all necessary steps to allow the Renewable Energy
Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

(i) Seller’s obligations under Sections 3.10, 4.8(g) and 4.8(h) shall be subject to Section 3.12, the term “Project” as used in Section 3.10 shall refer to the “Facility” as defined herein, the term “the contract” in Section 4.8(h) shall refer to “this Agreement” as defined herein, and the term “commercially reasonable efforts” as used in Section 3.10 and Section 4.10(g) means efforts consistent with and subject to Section 3.12.

ARTICLE 5
TAXES

5.1 Allocation of Taxes and Charges. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation to evidence such exemption or exclusion within thirty (30) days after the date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and from which Buyer claims it is exempt.

5.2 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; provided, neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

5.3 Environmental Costs. Subject in all respects to Section 3.5(a), Seller shall be solely responsible for:

(a) All Environmental Costs;

(b) All taxes, charges or fees imposed on the Facility or Seller by a Governmental Authority for Greenhouse Gas emitted by or attributable to the Facility during the Delivery Term;

(c) Seller’s obligations listed under “Compliance Obligation” in the GHG Regulations, and
(d) All other costs associated with the implementation and regulation of Greenhouse Gas emissions (whether in accordance with the California Global Warming Solutions Act of 2006, Assembly Bill 32 (2006) and the regulations promulgated thereunder, including the GHG Regulations, or any other federal, state or local legislation to offset or reduce any Greenhouse Gas emissions implemented and regulated by a Governmental Authority) with respect to the Facility and/or Seller.

ARTICLE 6
MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility.** Seller shall, as between Seller and Buyer, be solely responsible for the operation and maintenance of the Facility and the delivery of the Product and shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product, in accordance with Prudent Operating Practice.

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance and repair of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person’s property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer’s emergency contact identified in Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Facility Energy to the Delivery Point.

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller’s rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller’s Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements, including through shared ownership of, or possessing contractual right from, an Affiliate that is the interconnection customer under the Interconnection Agreement or the owner of any Shared Facilities and Interconnection Facilities; **provided,** such agreements shall (i) permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including maintaining Shared Facility capacity equal to the Interconnection Capacity Limit for Buyer's sole use, (ii) provide for separate metering of the Facility, (iii) provide that any other generating facilities not included in the Facility but using Shared Facilities shall not be included within the Facility’s CAISO Resource ID, and (iv) provide that in the event of any curtailment that is not specific to one or more CAISO Resource IDs of output from generating facilities using the Shared Facilities shall not be allocated to the Facility more than its pro rata portion of the total capacity of all generating facilities using the Shared Facilities. Seller shall not, and shall not permit any affiliate to, allocate to other parties a share of the total interconnection capacity under the Interconnection Agreements in excess of an amount equal to the total interconnection capacity under the Interconnection Agreements minus the Interconnection Capacity Limit.
ARTICLE 7
METERING

7.1 **Metering.** Seller shall measure the amount of Facility Energy using the Facility Meter. Seller shall separately meter all Station Use. The Facility Meter shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller’s cost. The Facility Meter shall be kept under seal, such seal to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer’s Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface-Settlements (MRI-S) web and/or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer’s reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If such a test is conducted at the request of the Buyer, Buyer shall pay for such test unless the testing shows the Facility Meter is inaccurate by more than one percent (1%), in which case Seller shall pay for such test. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists, then such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period so long as such adjustments are accepted by CAISO and WREGIS; provided, such period may not exceed twelve (12) months.

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for Product no later than the tenth (10th) day of each month for the previous calendar month. Each invoice shall (a) reflect records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Facility Energy, Replacement RA, and Replacement Product delivered to Buyer (if any), the calculation of Deemed Delivered Energy, Adjusted Energy Production and Adjusted SB 1383 Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Renewable Rate applicable to such Product in accordance with Exhibit C, and other relevant data for the prior month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.
8.2 Payment. Buyer shall make payment to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts by the later of (a) ten (10) Business Days after Buyer’s receipt of the invoice from Seller, and (b) the thirtieth (30th) day of the month after the operational month for which such invoice was rendered; provided, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the “Interest Rate”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 Books and Records. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days’ Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller’s performance of this Agreement because the compensation under this Agreement exceeds $10,000.

8.4 Payment Adjustments; Billing Errors. Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer’s next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer’s next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 Billing Disputes. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent
overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and G, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller’s Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days after the date Seller achieves Financial Close. Seller shall maintain the Development Security in full force and effect. Upon the earlier of (a) Seller’s delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement.

8.8 **Seller’s Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller may convert any Development Security previously provided to Buyer in accordance with Section 8.7 into Performance Security by providing written notice to Buyer of such conversion. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the Delivery Term has expired or terminated early. Following the occurrence of (a) the Delivery Term expiring or terminating early, and (b) payment in full (whether directly or indirectly such as through set-off or netting) of all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages (excluding any contingent indemnification payments other than payments reasonably anticipated as of the expiration or early termination of the Delivery Term for matters for which claims for indemnification have been made as of such date), Buyer shall promptly return to Seller the unused portion of the Performance Security.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest (“Security Interest”) in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller
agrees to take all action as Buyer reasonably requires in order to perfect Buyer’s Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit an amount equal to any damages, and other amounts due and owing to Buyer, and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer, in an amount, to the extent reasonably practicable, equal to any damages, and other amounts due and owing to Buyer, free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE 9
NOTICES

9.1 Addresses for the Delivery of Notices. Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth in Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 Acceptable Means of Delivering Notice. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5 pm Pacific Prevailing Time, on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be
sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10
FORCE MAJEURE

10.1 Definition.

(a) “Force Majeure Event” means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of commercially reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of the claiming Party; provided, a Force Majeure Event shall not excuse any such delay, nonperformance, or noncompliance to the extent the claiming Party’s fault or negligence contributed thereto in scope or duration.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “Force Majeure Event” does not include (i) economic conditions or changes in Law that render a Party’s performance of this Agreement at the Renewable Rate unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.
10.2 **No Liability If a Force Majeure Event Occurs.** Except as provided in Section 4 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 **Notice.** In order to claim a Force Majeure Event, the claiming Party, (a) within fourteen (14) days after the initial occurrence of the claimed Force Majeure Event, must give the other Party Notice describing the particulars of the occurrence in substantially the form set forth in Exhibit T, (b) provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement, and (c) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party.

10.4 **Termination Following Force Majeure Event or Development Cure Period.**

(a) If the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) in Exhibit B) equal or exceed two hundred seventy (270) days, and Seller has demonstrated to Buyer’s reasonable satisfaction that Seller’s failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date (as extended) was the result of delays that would have otherwise entitled to Seller to two hundred seventy (270) days of Development Cure Period delays if not for the one hundred eighty (180)-day limitation, then Seller may terminate this Agreement upon Notice to Buyer. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(c), and Buyer shall promptly return to Seller any Development Security then held by Buyer plus the full amount of Commercial Operation Delay Damages paid by Seller, less any amounts drawn in accordance with this Agreement.

(b) If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party; provided, so long as the Party claiming such Force Majeure Event can demonstrate, on or before the date that is sixty (60) days following the occurrence of the Force Majeure Event, that (a) the effects of the Force Majeure Event cannot, with the exercise of commercially reasonable effort, be overcome within such twelve (12) month period due to the procurement of long-lead time equipment necessary for repair of the Facility, and (b) such claiming Party has a plan, reasonably acceptable to the other Party, to remedy and cure the Force Majeure Event on or before the date that is one hundred eighty (180) days following
the expiration of the twelve (12) month period, as substantiated by the report of an independent, third-party engineer (the “Force Majeure Recovery Plan”), then, so long as the claiming Party has been making commercially reasonable efforts to comply with the Force Majeure Recovery Plan, then non-claiming Party shall not have the right to terminate this Agreement under this Section 10.4 unless the claiming Party fails to restore its full performance under this Agreement as set forth in the Force Majeure Recovery Plan. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(c), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

11.1 Events of Default. An “Event of Default” shall mean,

(a) with respect to a Party (the “Defaulting Party”) that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (A) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.8, (B) failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Section 4.7(a), and (C) failures related to the Adjusted SB 1383 Energy Production, the exclusive remedies for which are set forth in Section 4.7(a), and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails
to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party;

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility, except for Replacement Product;

(ii) the failure by Seller to (A) achieve Construction Start on or before the Guaranteed Construction Start Date, as such date may be extended by Seller’s payment of Daily Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B, or (B) achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller’s payment of Commercial Operation Delay Damages pursuant to Section 2 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(iii) if, in any consecutive six (6) month period, the Adjusted Energy Production amount (calculated in accordance with Exhibit G-1) for such period is not at least ten percent (10%) of the 6-month pro rata amount of Expected Energy (Total) for such period adjusted for seasonality proportionately to the monthly forecast provided annually by Seller under Section 4.3(a), and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) threshold and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days (“Cure Plan”) and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(iv) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

(v) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody’s;

(B) the issuer of such Letter of Credit becomes Bankrupt;
(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

11.2 Remedies; Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("Non-Defaulting Party") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("Early Termination Date") that terminates this Agreement (the "Terminated Transaction") and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment, or (ii) the Termination Payment, as applicable, in each case calculated in accordance with Section 11.3 below;

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; provided, payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 Damage Payment; Termination Payment. If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or Termination Payment, as applicable, in accordance with this Section 11.3.
(a) **Damage Payment Prior to Commercial Operation Date.** If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

  (i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be a dollar amount that equals the amount of the Development Security plus, if the Development Security is posted as cash, any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon if the Development Security is posted as cash, and any amount of Development Security that Seller has not yet posted with Buyer shall be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer’s damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller’s default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer’s harm or loss.

  (ii) If Buyer is the Defaulting Party, then the Damage Payment shall be owed to Seller and shall equal the sum of the actual, documented and verifiable costs incurred by Seller between the Effective Date and the Early Termination Date in connection with the Facility, less the fair market value (determined in a commercially reasonable manner) of (A) all Seller’s assets individually, or (B) the entire Facility, whichever is greater on the Early Termination Date, regardless of whether or not any Seller asset or the entire Facility is actually sold or disposed of. There will be no amount owed to Buyer. The Parties agree that Seller’s damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer’s default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller’s harm or loss.

(b) **Termination Payment On or After the Commercial Operation Date.** The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date (“**Termination Payment**”) shall be the aggregate of all Settlement Amounts plus any and all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.
11.4 **Notice of Payment of Termination Payment or Damage Payment.** As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment or Damage Payment.** If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party’s calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.

11.6 **Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.** If the Agreement is terminated prior to the Commercial Operation Date for any reason except due to Buyer’s Event of Default, neither Seller nor Seller’s Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following such early termination date, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller’s Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price; and Buyer fails to accept such offer within forty-five (45) days of Buyer’s receipt thereof.

Neither Seller nor Seller’s Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by Buyer.

Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7 **Rights And Remedies Are Cumulative.** Except where liquidated damages or other remedies are explicitly provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.
11.8 **Mitigation.** Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

**ARTICLE 12**

**LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.**

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN IP INDEMNITY CLAIM, (C) AN ARTICLE 16 INDEMNITY CLAIM, (D) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (E) RESULTING FROM A PARTY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 **Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER’S LIMITATION OF LIABILITY AND THE PARTIES’ WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO “FAIL OF THEIR ESSENTIAL PURPOSE” OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER’S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS
provided in exhibit b, exhibit c, exhibit g-1, exhibit g-2, and exhibit p, the parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the anticipated harm or loss. it is the intent of the parties that the limitations herein imposed on remedies and the measure of damages be without regard to the cause or causes related thereto, including the negligence of any party, whether such negligence be sole, joint or concurrent, or active or passive. the parties hereby waive any right to contest such payments as an unreasonable penalty.

the parties acknowledge and agree that money damages and the express remedies provided for herein are an adequate remedy for the breach by the other of the terms of this agreement, and each party waives any right it may have to specific performance with respect to any obligation of the other party under this agreement.

article 13
representations and warranties; authority

13.1 seller’s representations and warranties. as of the effective date, seller represents and warrants as follows:

(a) seller is a corporation, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of seller.

(b) seller has the power and authority to enter into and perform this agreement and is not prohibited from entering into this agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this agreement, except where such failure does not have a material adverse effect on seller’s performance under this agreement. the execution, delivery and performance of this agreement by seller has been duly authorized by all necessary limited liability company action on the part of seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of seller or any other party to any other agreement with seller.

(c) the execution and delivery of this agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by seller with the provisions of this agreement will not conflict with or constitute a breach of or a default under any law presently in effect having applicability to seller, subject to any permits that have not yet been obtained by seller, the documents of formation of seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which seller is a party or by which any of its property is bound.
(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors’ rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility is located in the State of California.

(f) Neither Seller nor its Affiliates have received notice from or been advised by any existing or potential supplier or service provider that COVID-19 has caused, or is reasonably likely to cause, a delay in the construction of the Facility or the delivery of materials necessary to complete the Facility, in each case that would cause the Construction Start Date to be later than the Guaranteed Construction Start Date or the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date.

13.2 **Buyer’s Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer’s performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its
terms, except as limited by laws of general applicability limiting the enforcement of creditors’ rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

(f) Buyer is a “local public entity” as defined in Section 900.4 of the Government Code of the State of California.

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Workforce Development.** The Parties acknowledge that in connection with Buyer’s renewable energy procurement efforts, including entering into this Agreement, Buyer is committed to creating community benefits, which includes engaging a skilled and trained workforce and targeted hires. Accordingly, prior to the Guaranteed Construction Start Date, Seller shall ensure that work performed in connection with construction of the Facility will be conducted using a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or similar agreement providing for terms and conditions of employment with applicable labor organizations, and shall remain compliant with such agreement in accordance with the terms thereof. Seller shall provide documentation reasonably satisfactory to Buyer demonstrating Seller’s compliance with the requirements of this Section 13.4.

ARTICLE 14
ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written
consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; 

provided, a Change of Control of Seller shall not require Buyer’s consent if the assignee or transferee is a Permitted Transferee. Any assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys’ fees.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon and execute a consent to collateral assignment of this Agreement substantially in the form attached hereto as Exhibit S; 

provided, Buyer shall accommodate any reasonable requests from such Lender to modify Exhibit S (“Consent to Collateral Assignment”).

14.3 **Permitted Assignment by Seller.** Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller or (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); if, and only if:

(a) the assignee is a Permitted Transferee;

(b) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and

(c) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller’s obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Buyer.

14.4 **Shared Facilities; Portfolio Financing.** Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax equity or cash equity investment, and/or (2) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; 

provided, Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney’s fees incurred by Buyer in connection therewith shall be borne by Seller.
14.5 **Buyer Financing Assignment.** Seller agrees that Buyer may assign a portion of its rights and obligations under this Agreement to a Person in connection with a municipal prepayment financing transaction (“Buyer Assignee”) at any time upon not less than fifteen (15) Business Days’ notice by delivering Notice of such assignment, which notice must include a proposed limited assignment agreement substantially in the form attached hereto as Exhibit L (provided, Section 6 in Exhibit L shall be included only if Financing Party (as defined in such limited assignment agreement) requires inclusion of such section) (“Limited Assignment Agreement”), provided that, at the time of such assignment, such Buyer Assignee has a Credit Rating equal to the higher of (a) Buyer’s Credit Rating at the time of such assignment (if applicable), and (b) Baa3 from Moody’s and BBB- from S&P. As reasonably requested by Buyer Assignee, Seller shall (i) provide Buyer Assignee with information and documentation with respect to Seller, including but not limited to account opening information, information related to forecasted generation, Credit Rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such Limited Assignment Agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Buyer Assignee and Buyer and the requirements of this Section 14.5.

**ARTICLE 15**

**DISPUTE RESOLUTION**

15.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either forty-five (45) days of initiating such discussions, or within sixty (60) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15.3 **Attorneys’ Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, each Party shall bear its own respective costs, expenses and attorneys’ fees in connection with said action.

15.4 **Venue.** In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Los Angeles County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, and waive any claim or defense that such forum is not convenient or proper.
ARTICLE 16
INDEMNIFICATION

16.1 Indemnification.

(a) Each Party (the “Indemnifying Party”) agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the “Indemnified Party”) from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents, or (ii) for third-party claims resulting from the Indemnifying Party’s breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement.

(b) Seller shall indemnify, defend and hold harmless Buyer and its Affiliates, directors, officers, employees from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) in connection with any claims of infringement upon or violation of any trade secret, trademark, trade name, copyright, patent, or other intellectual property rights of any third party by equipment, software, applications or programs (or any portion of same) used in connection with the Facility (an “IP Indemnity Claim”).

(c) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 Claims. Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party, provided, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party’s expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim; provided, settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party’s counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party’s damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party
to obtain such insurance proceeds.

**17.1 Insurance**

(a) **General Liability.** Seller shall provide and maintain, at its sole expense, the following types and minimum limits of insurance with a carrier rated “A- VII” or higher by A.M. Best’s Key Rating Guide: (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of One Million Dollars ($1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars ($2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller’s obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Ten Million Dollars ($10,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) **Employer’s Liability Insurance.** Employers’ Liability insurance shall not be less than One Million Dollars ($1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar ($1,000,000) policy limit will apply to each employee.

(c) **Workers Compensation Insurance.** Seller, if it has employees, shall also maintain at all times during the Contract Term workers’ compensation and employers’ liability insurance coverage in accordance with applicable requirements of Law.

(d) **Business Auto Insurance.** Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars ($1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller’s use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) **Construction All-Risk Insurance.** Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(f) **Property Damage Insurance.** Seller shall maintain or cause to be maintained during the Delivery Term, property damage insurance with a policy limit of not less than the full replacement cost of the Facility on a per occurrence basis.

(g) **Pollution Liability Insurance.** Seller shall maintain or cause to be maintained during the Contract Term, pollution liability insurance in an amount not less than Two Million Dollars ($2,000,000) each occurrence covering losses involving hazardous material(s) and caused by pollution incidents or conditions that arise from any subcontractor’s performance or lack of performance of work under this Agreement, or might be required by federal, state, regional, municipal, and local laws, including coverage for bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death, property damage including the resulting loss of
use thereof, clean-up costs, and the loss of use of tangible property that has not been physically
damaged or destroyed, and defense costs. If such coverage is on a “claims made” policy form, any
applicable “retroactive date” shall be no later than the Effective Date and shall be maintained for
at least two (2) years beyond the termination of this Agreement, to allow for a reasonable extended
reporting period.

(h) **Subcontractor Insurance.** Seller shall require all of its subcontractors to
carry: (i) commercial general liability insurance with a combined single limit of coverage not less
than One Million Dollars ($1,000,000); (ii) workers’ compensation insurance and employers’
liability coverage in accordance with applicable requirements of Law; and (iii) business auto
insurance for bodily injury and property damage with limits of one million dollars ($1,000,000)
per occurrence. All subcontractors shall include Seller as an additional insured to insurance carried
pursuant to clauses (h)(i) and (h)(iii). All subcontractors shall provide a primary endorsement and
a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(h).

(i) **Evidence of Insurance.** Within fifteen (15) days after execution of the
Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of
insurance evidencing such coverage. Such certificates shall specify that Buyer shall be given at
least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation
or termination of coverage. All insurance required herein shall be primary coverage without right
of contribution from any insurance of Buyer, and such policies shall be endorsed with a waiver of
subrogation in favor of Buyer for all work performed by Seller, its employees, agents and
subcontractors and any subrogation rights which may pass to Seller’s insurance carriers for the
payment of any claims. Any other insurance maintained by Seller is for the exclusive benefit of
Seller and shall not in any manner inure to the benefit of Buyer.

(j) **Failure to Comply with Insurance Requirements.** If Seller fails to comply
with any of the provisions of this Article 17, Seller, among other things and without restricting
Buyer’s remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer
and provide insurance in accordance with the terms and conditions above. With respect to the
required general liability, umbrella liability and commercial automobile liability insurance, Seller
shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their
respective officers, directors, shareholders, agents, employees, assigns, and successors in interest,
in response to a third-party claim in the same manner that an insurer would have, had the insurance
been maintained in accordance with the terms and conditions set forth above. In addition, alleged
violations of the provisions of this Article 17 means that Seller has the initial burden of proof
regarding any legal justification for refusing or withholding coverage and Seller shall face the
same liability and damages as an insurer for wrongfully refusing or withholding coverage in
accordance with the laws of California.

**ARTICLE 18**

**CONFIDENTIAL INFORMATION**

18.1 **Definition of Confidential Information.** The following constitutes “Confidential
Information,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller
including: (a) the terms and conditions of, and proposals and negotiations related to, this
Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as
“confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality.** The Party receiving Confidential Information (the “Receiving Party”) from the other Party (the “Disclosing Party”) shall not disclose Confidential Information to a third party (other than the Party’s employees, lenders, counsel, accountants, directors or advisors, or any such representatives of a Party’s Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; provided, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word “Confidential.” The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as “Confidential” that clearly contain information that is not Confidential Information.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“Requested Confidential Information”), Buyer shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer, its officers, employees and agents (“Buyer’s Indemnified Parties”), from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer’s Indemnified Parties for Buyer’s refusal to disclose any Requested Confidential Information.
18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Further Permitted Disclosure.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

**ARTICLE 19**
**MISCELLANEOUS**

19.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

19.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; provided, this Agreement may not be amended by electronic mail communications.

19.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer
intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) and/or, to the extent set forth herein, any Lender and/or Indemnified Party.

19.5 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

19.7 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.8 **Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party.

19.9 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10 **No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the employees, directors, officers, consultants or advisors of Buyer or its constituent members, in connection with this Agreement.

19.11 **Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the U.S. Bankruptcy Code, and Buyer and
Seller are “forward contract merchants” within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any Bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.12 Change in Electric Market Design. If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

19.13 Further Assurances. Each of the Parties hereto agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]
IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

COMMUNITY RENEWABLE ENERGY SERVICES, INC., a California corporation

By: ____________________________
Name: __________________________
Title: __________________________

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority

By: ____________________________
Name: __________________________
Title: __________________________
EXHIBIT A

FACILITY DESCRIPTION

Site Name: Dinuba Energy Biomass Power Plant

Site includes all or some of the following APNs: 012-250-016

City: 6929 Ave 430; Reedley, CA

County: Tulare

Zip Code: 93654

Latitude and Longitude: 36.56897  119.51895

Facility Description: See below

Delivery Point: Breaker 65 in PG&E Substation on Reedley-Dinuba line

P-node: DINUBA_6_N005 (as may be updated by Seller to reflect the actual P-node for the Facility, including any of the following P-nodes: DINUBAE_7_B2, DINUBAE_7_N001, DINUBA_6_N001 and DINUBA_6_UNIT)

Transmission Provider: Pacific Gas and Electric Company

Additional Information: None
EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION


   (a) “Construction Start” will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, and once Seller has purchased (or executed purchase orders) for substantially all material equipment necessary to rebuild the Facility’s turbine and work has started at the Facility with respect to such rebuilding. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the “Construction Start Date.” Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

   (b) Seller may extend the Guaranteed Construction Start Date by paying Daily Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of one hundred twenty (120) days of extensions by such payment of Daily Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date, Seller shall provide notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. If Seller achieves Construction Start prior to the Guaranteed Construction Start Date, as extended by the payment of Daily Delay Damages, Buyer shall refund to Seller the Daily Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Daily Delay Damages, not to exceed the total amount of Daily Delay Damages paid by Seller pursuant to this Section 1(b). Additionally, if Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller and not previously refunded by Buyer, which shall be paid in accordance with Section 8.2 of the Agreement.

2. Commercial Operation of the Facility. “Commercial Operation” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “COD Certificate”).

   (a) Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

   (b) Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to
extend the Guaranteed Commercial Operation Date, not to exceed a total of ninety (90) days of extensions by such payment of Commercial Operation Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date, Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of Commercial Operation Delay Damages, Buyer shall promptly refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(b).

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.

4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be extended on a day-for-day basis (the “Development Cure Period”) for the duration of any and all delays arising out of the following circumstances to the extent (i) the following circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) such delays could not be mitigated by Seller using commercially reasonable efforts to overcome the delays, and (iii) such delays do not run concurrently:

   (a) a Force Majeure Event occurs;

   (b) Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Seller shall submit any claim for Development Cure Period delays within (x) three (3) Business Days with respect to (b) above, and, in the case of (a) above, within fourteen (14) days after the initial occurrence of the claimed Force Majeure Event in substantially the form set forth in Exhibit T. Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) above) shall not exceed one hundred eighty (180) days, for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(d) above) shall not exceed two hundred seventy (270) days. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take commercially reasonable actions.
5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit H hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “Capacity Damages” to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars ($250,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity, Expected Energy (Total), SB 1383 Expected Energy, Development Security, and Performance Security shall be decreased by the percentage by which the original Guaranteed Capacity exceeds the Installed Capacity. Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Delay Damages, or any other form of liquidated damages under this Agreement.

6. **Buyer’s Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller’s payment obligation thereof.
EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) **Energy Payments.** Buyer shall pay Seller (i) the Renewable Rate for each MWh of Facility Energy, plus Deemed Delivered Energy, if any, up to one hundred fifteen percent (115%) of the Expected Energy (Total) for such Contract Year, plus (ii) the SB 1383 Renewable Rate for each MWh of SB 1383 Facility Energy, plus SB 1383 Deemed Delivered Energy, if any, up to one hundred fifteen percent (115%) of the SB 1383 Expected Energy (Total) for such Contract Year.

(b) **Excess Contract Year Deliveries Over 115%.** Notwithstanding the foregoing, if at any point in any Contract Year, (i) the amount of Facility Energy plus Deemed Delivered Energy exceeds one hundred fifteen percent (115%) of the total Expected Energy (Total) for such Contract Year, the price to be paid for additional Facility Energy and/or Deemed Delivered Energy shall be $0.00/MWh, and (ii) the amount of SB 1383 Facility Energy plus SB 1383 Deemed Delivered Energy exceeds one hundred fifteen percent (115%) of the total SB 1383 Expected Energy (Total) for such Contract Year, all additional SB 1383 Facility Energy shall be deemed Facility Energy for purposes of this Agreement.

(c) **Excess Settlement Interval Deliveries.** If during any Settlement Interval, Seller delivers Facility Energy in excess of the product of the Guaranteed Capacity and the duration of the Settlement Interval, expressed in hours (“Excess MWh”), then the price applicable to all such Excess MWh in such Settlement Interval shall be zero dollars ($0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such Excess MWh.

(d) **Test Energy.** Test Energy is compensated in accordance with Section 3.6.

(e) **Tax Credits.** The Parties agree that the Renewable Rate and SB 1383 Renewable Rate are not subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller’s or the Facility’s eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller’s accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller’s obligation to deliver Facility Energy and Product, shall be effective regardless of whether construction of the Facility (or any portion thereof) or the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.
EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) **Buyer as Scheduling Coordinator for the Facility.** Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of Test Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer’s designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility’s Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer’s authorization to act as the Facility’s Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility’s SC) shall submit bids to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market, real-time or other market basis that may develop after the Effective Date, as determined by Buyer.

(b) **Notices.** Buyer (as the Facility’s SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility’s status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller shall cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO by (in order of preference) telephonically or electronic mail to the personnel designated to receive such information.

(c) **CAISO Costs and Revenues.** Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO costs and penalties (including Imbalance Energy costs) resulting from any failure by Seller to abide by the CAISO Tariff, the terms of this Agreement or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer’s failure to perform its duties as Scheduling Coordinator for the Facility). Buyer or its designated SC shall make commercially reasonable efforts to cooperate with Seller to allow Seller to make Resource Adequacy substitutions with respect to such outages as permitted by the CAISO Tariff. The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller’s account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the
responsibility of Seller and for Seller’s account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller’s responsibility.

(d) **CAISO Settlements.** Buyer (as the Facility’s SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer shall review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer’s existing settlement processes for charges that are Buyer’s responsibilities. Subject to Seller’s right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller’s receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for such CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(e) **Dispute Costs.** Buyer (as the Facility’s SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer’s costs and expenses (including reasonable attorneys’ fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(f) **Terminating Buyer’s Designation as Scheduling Coordinator.** At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) **Master Data File and Resource Data Template.** Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO’s Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party’s prior written consent.

(h) **NERC Reliability Standards.** Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller’s compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer’s possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller’s compliance with NERC reliability standards.
EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the Site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller’s Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are reasonably likely to affect Seller’s Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Progress and schedule of all material agreements, contracts, permits (including Material Permits), approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
13. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
14. Any other documentation reasonably requested by Buyer.
EXHIBIT F-1

MONTHLY EXPECTED AVAILABLE FACILITY CAPACITY

[MW Per Hour] – [Insert Month]

|     | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|-----|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| JAN |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| FEB |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| MAR |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| APR |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| MAY |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| JUN |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| JUL |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| AUG |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| SEP |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| OCT |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| NOV |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| DEC |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.
EXHIBIT F-2

MONTHLY EXPECTED FACILITY ENERGY

[MWh Per Hour] – [Insert Month]

| 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| JAN  |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| FEB  |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| MAR  |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| APR  |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| MAY  |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| JUN  |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| JUL  |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| AUG  |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| SEP  |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| OCT  |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| NOV  |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| DEC  |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.
EXHIBIT G-1

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7(a), if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

\[
\[(A - B) \times (C - D)] - (E + F)\]

where:

\(A\) = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

\(B\) = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

\(C\) = Replacement price for the Performance Measurement Period, in $/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the market value of Replacement Green Attributes

\(D\) = the Renewable Rate, in $/MWh

\(E\) = The amount of Energy Replacement Damages paid by Seller with respect to the immediately preceding Performance Measurement Period

\(F\) = The product of (a) the amount of Replacement Product in MWhs delivered by Seller in the immediately preceding Contract Year and (b) the price which is \((C - D)\)

“Adjusted Energy Production” shall mean the sum of the following: Facility Energy + Deemed Delivered Energy + Lost Output + Replacement Product.

“Replacement Energy” means energy produced by a facility other than the Facility, that is provided by Seller to Buyer as Replacement Product, in an amount equal to the amount of Replacement Green Attributes provided by Seller as Replacement Product for the same Performance Measurement Period.

“Replacement Green Attributes” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same year of production as the Renewable Energy Credits that would have been generated by the Facility during the applicable Measurement Period.
“Replacement Product” means (a) Replacement Energy, and (b) Replacement Green Attributes in an amount not to exceed ten percent (10%) of the Expected Energy (Total) for the previous Contract Year.

No payment shall be due if the calculation of (a) \((A - B)\), (b) \((C - D)\), or (c) \(((A - B) \times (C - D)) - (E + F)\), yields a negative number. In no event will Buyer owe any payment to Seller pursuant to this Exhibit G-1.

Within sixty (60) days after each Contract Year, Buyer shall send Seller Notice of the amount of damages owing, if any, which the undisputed amounts with respect thereto shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period; provided, the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.
EXHIBIT G-2

GUARANTEED SB 1383 ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7(b), if Seller fails to achieve the Guaranteed SB 1383 Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

\[ (A - B) \times C - D \]

where:

\[ A \] = the Guaranteed SB 1383 Energy Production amount for the Performance Measurement Period, in MWh

\[ B \] = the Adjusted SB 1383 Energy Production amount for the Performance Measurement Period, in MWh

\[ C \] = [Redacted]

\[ D \] = The amount of Energy Replacement Damages paid by Seller with respect to the immediately preceding Performance Measurement Period

"Adjusted SB 1383 Energy Production" shall mean the sum of the following: SB 1383 Facility Energy + SB 1383 Deemed Delivered Energy + SB 1383 Lost Output + SB 1383 Replacement Product.

No payment shall be due if the calculation of (a) \( (A - B) \) or (b) \( (A - B) \times C - D \), yields a negative number. In no event will Buyer owe any payment to Seller pursuant to this Exhibit G-2.

Within sixty (60) days after each Contract Year, Buyer shall send Seller Notice of the amount of damages owing, if any, which the undisputed amounts with respect thereto shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period.
EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("Certification") of Commercial Operation is delivered by _______[licensed professional engineer] ("Engineer") to Clean Power Alliance of Southern California, a California joint powers authority ("Buyer") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _______ ("Agreement") by and between [Seller] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of _______[DATE]_____, Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

2. The installed nameplate capacity of the Facility is __ MW AC ("Installed Capacity").

3. The Installed Capacity is not less than ninety-five percent (95%) of the Guaranteed Capacity, which is [ ] kW, as was demonstrated during test operation.

4. Authorization to parallel the Facility was obtained from the Transmission Provider, [Name of Transmission Provider as appropriate] on___[DATE]_____.

5. The Transmission Provider has provided documentation supporting full unrestricted release of the Facility for Commercial Operation by [Name of Transmission Provider as appropriate] on _______[DATE]_____.

6. The CAISO has provided notification supporting Commercial Operation of the Facility, in accordance with the CAISO Tariff on _______[DATE]_____.

7. Seller has segregated and separately metered Station Use to the extent reasonably possible in accordance with Prudent Operating Practice.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _______ day of ______________, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By:______________________________

Its:______________________________

Date:______________________________
EXHIBIT I
RESERVED

Exhibit I-1

Agenda Page 237
FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“Certification”) is delivered by [SELLER ENTITY] (“Seller”) to Clean Power Alliance of Southern California, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated __________ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

(1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.

(2) the Construction Start Date occurred on _____________ (the “Construction Start Date”); and

(3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

_____________________________________________________________________

(such description shall amend the description of the Site in Exhibit A of the Agreement).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ___ day of ________.

[SELLER ENTITY]

By:________________________________________
Its:_______________________________________

Date:_______________________________________
EXHIBIT K

FORM OF LETTER OF CREDIT¹

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:
Bank Ref.:
Amount: US$[XXXXXXXX]

Beneficiary:

Clean Power Alliance of Southern California,
a California joint powers authority
801 S Grand, Suite 400
Los Angeles, CA 90017

Ladies and Gentlemen:

By the order of __________ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of Clean Power Alliance of Southern California, a California joint powers authority (“Beneficiary”), 801 S Grand, Suite 400, Los Angeles, CA 90017, for an amount not to exceed the aggregate sum of U.S. $[XXXXXX] (United States Dollars [XXXXX] and 00/100) (the “Available Amount”), pursuant to that certain Renewable Power Purchase Agreement dated as of ______ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall be of no further force or effect at 5:00 p.m., California time, on [Date] or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit, the “Expiration Date”).

For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in Los Angeles, California.

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before 5:00 p.m. California time, on or before the Expiration Date of a copy of this Letter of Credit No. [XXXXXXX] and all amendments accompanied by Beneficiary’s dated statement purportedly signed by Beneficiary’s duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Issuer by facsimile at [facsimile number for draws] or such other number as specified from time-to-time by the Issuer.

¹ Note to Buyer: Subject to review by Seller’s issuer of its Letter of Credit.

Exhibit K - 1
The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Issuer hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Issuer before the Expiration Date. All correspondence and any drawings (other than those made by facsimile) hereunder are to be directed to [Issuer address/contact]. Issuer undertakes to make payment to Beneficiary under this Standby Letter of Credit within three (3) business days of receipt by Issuer of a properly presented Drawing Certificate. The Beneficiary shall receive payment from Issuer by wire transfer to the bank account of the Beneficiary designated in the Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; provided, the Available Amount shall be reduced by the amount of each such drawing.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter) beginning on the present Expiration Date hereof and upon each anniversary for such date (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter), unless at least one hundred twenty (120) days prior to any such Expiration Date Issuer has sent Beneficiary written notice by overnight courier service at the address provided below that Issuer elects not to extend this Letter of Credit, in which case it will expire on its then-current Expiration Date. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the “ISP”). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer’s Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer’s Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Clean Power Alliance of Southern California, a California joint powers authority, Chief Financial Officer, 801 S Grand, Suite 400, Los Angeles, CA 90017. Only notices to Beneficiary meeting the requirements of this paragraph shall be
considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

___________________________
[Insert officer name]
[Insert officer title]
EXHIBIT A

(DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of [ ], [ADDRESS], as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of __________ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of __________, 20__ (the “Agreement”).

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $___________ because a Seller Event of Default (as such term is defined in the Agreement) has occurred.

   or

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $___________, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [ ] and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [ ] by wire transfer in immediately available funds to the following account:

[Specify account information]

[ ]

_______________________________
Name and Title of Authorized Representative

Date __________________________

Exhibit K - 4
FORM OF ASSIGNMENT SCHEDULE
[SELLER ENTITY]

Assigned Product: Energy and Green Attributes (PCC1)

Assigned Delivery Point: [___]

Assigned Prepay Quantity: As set forth in Appendix 2; provided that (i) all Assigned Products shall be delivered pursuant to the Limited Assignment Agreement during the Assignment Period as provided in Appendix 1 and (ii) the Assigned Prepay Quantity is defined for the convenience of PPA Buyer and [Financing Party] and shall have no impact on the obligations of the Parties under the Limited Assignment Agreement.

APC Contract Price: $[___]/MWh

Assignment Period: [___]
ANNEX I – FORM OF LIMITED ASSIGNMENT AGREEMENT

This Limited Assignment Agreement (this “Assignment Agreement” or “Agreement”) is entered into as of [______________] by and among [PPA Seller], a [______________] (“PPA Seller”), Clean Power Alliance, a California joint powers authority (“PPA Buyer”), and [Financing Party], a [______________] (“Financing Party”), and relates to that certain power purchase agreement (the “PPA”) between PPA Buyer and PPA Seller as defined in Appendix 1 hereto. Unless the context otherwise specifies or requires, capitalized terms used but not defined in this Agreement have the meanings set forth in the PPA.

In consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and Financing Party (the “Parties” hereto; each is a “Party”) agree as follows:

1. Limited Assignment and Delegation.

(a) PPA Buyer hereby assigns, transfers, and conveys to Financing Party all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of, or have made available to it, the products described in Appendix 1 (collectively, the “Assigned Product”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “Assigned Product Rights”). All Assigned Product shall be delivered pursuant to the terms and conditions of this Agreement during the Assignment Period as provided in Appendix 1. All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer.

(b) PPA Buyer hereby delegates to Financing Party the obligation to pay for all Assigned Product that is actually delivered to Financing Party pursuant to the Assigned Product Rights during the Assignment Period (the “Delivered Product Payment Obligation” and together with the Assigned Product Rights, collectively the “Assigned Rights and Obligations”); provided that (i) all other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer and PPA Buyer shall be solely responsible for any amounts due to PPA Seller that are not directly related to Assigned Product; and (ii) the Parties acknowledge and agree that PPA Seller will only be obligated to deliver a single consolidated invoice during the Assignment Period (with a copy to Financing Party consistent with Section 1(d) hereof). To the extent Financing Party fails to pay the Delivered Product Payment Obligation by the due date for payment set forth in the PPA, notwithstanding anything in this Agreement to the contrary, PPA Buyer agrees that it shall make such payment and that it will be an Event of Default pursuant to Section 11.1 if PPA Buyer does not make such payment within five (5) Business Days of receiving Notice of such non-payment from PPA Seller.

(c) Financing Party hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance, and delegation described in clauses (a) and (b) above.

(d) All scheduling of Assigned Product and other communications related to the PPA shall take place pursuant to the terms of the PPA; provided that during the Assignment Period (i) title to Assigned Product will pass from PPA Seller to Financing Party upon delivery or making available by PPA Seller of Assigned Product in accordance with the PPA; (ii) PPA Buyer will provide copies to Financing Party of any Notice of a Force Majeure Event or Event of Default or default, breach or other occurrence that, if not cured within the applicable grace period, could result in an Event of Default contemporaneously upon delivery thereof to PPA Seller and promptly after receipt thereof from PPA Seller; (iii) PPA Seller will provide copies to Financing Party of annual forecasts of Energy...
and monthly forecasts of available capacity and Energy provided pursuant to Section 4.3 of the PPA; (iv) PPA Seller will provide copies to Financing Party of all invoices and supporting data provided to PPA Buyer pursuant to Section 8.1, provided that any payment adjustments or subsequent reconciliations occurring after the date that is 10 days prior to the payment due date for a monthly invoice, including pursuant to Section 8.4, will be resolved solely between PPA Buyer and PPA Seller and therefore PPA Seller will not be obligated to deliver copies of any communications relating thereto to Financing Party; and (v) PPA Buyer and PPA Seller, as applicable, will provide copies to Financing Party of any other information which PPA Buyer has a right to request pursuant to the PPA, as reasonably requested by Financing Party relating to Assigned Product.

(e) PA Seller acknowledges that (i) Financing Party intends to immediately transfer title to any Assigned Product received from PPA Seller through one or more intermediaries such that all Assigned Product will be re-delivered to PPA Buyer; and (ii) in the event that PPA Buyer fails to pay the relevant intermediary entity for any such Assigned Products, the receivables owed by PPA Buyer for such Assigned Products (“PPA Buyer Receivables”) may be transferred to Financing Party. To the extent any such PPA Buyer Receivables are transferred to Financing Party, Financing Party may transfer such PPA Buyer Receivables to PPA Seller and apply the face amount thereof as a reduction to any Delivered Product Payment Obligation. Thereafter, PPA Seller shall be entitled to pursue collection on such PPA Buyer Receivables directly against PPA Buyer.

(f) n or before the commencement of the Assignment Period, [_____] (“Guarantor”) will issue, in favor of PPA Seller, a guaranty of Financing Party’s payment obligations under this Assignment Agreement substantially in the form of Appendix 3 attached hereto (“Guaranty”). PPA Seller may draw upon, apply, or make demand under the Guaranty to recover any unpaid amounts due from Financing Party and not timely paid as set forth herein; provided, however, that PPA Seller’s rights under the Guaranty and this subsection (f) shall not reduce or affect PPA Buyer’s obligation to render payments when due under the PPA or extend any deadlines in the PPA.

(g) ll payments due to PPA Seller in respect of Sections 3.3 of the PPA will be paid (subject to Section 1(e) above) by Financing Party into the custodial account listed in Appendix 1, and all payments due to PPA Buyer in respect of Section 3.3 of the PPA will be paid by PPA Seller into the custodial account listed in Appendix 1, which custodial account is established under that certain Custodial Agreement of even date herewith that Financing Party, PPA Buyer and [Custodian] have entered into for the administration of payments due hereunder.

(h) he Assigned Prepay Quantity set forth in Appendix 2 relates to obligations by and between Financing Party and PPA Buyer and has no impact on PPA Seller’s rights and obligations under the PPA.

(i) except as expressly set forth in Section 1(a) of this Assignment Agreement with respect to the product delivery obligations, nothing in this Agreement modifies or amends any rights or obligations of PPA Buyer and PPA Seller under the PPA.

2. Assignment Early Termination.

(a) The Assignment Period may be terminated early upon the occurrence of any of the following:
(1) delivery of a written notice of termination specifying a termination date by either Financing Party or PPA Buyer to each of the other Parties;

(2) delivery of a written notice of termination specifying a termination date by PPA Seller to each of Financing Party and PPA Buyer following Financing Party’s failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such payment is not made by Financing Party within five (5) business days following receipt by Financing Party and PPA Buyer of written notice;

(3) delivery of a written notice by PPA Seller if any of the events described in the definition of Bankrupt in the PPA occurs with respect to Financing Party;

(4) delivery of a written notice by Financing Party if any of the events described in the definition of Bankrupt in the PPA occurs with respect to PPA Seller; or

(5) failure of the Guaranty provided by the Guarantor to PPA Seller hereunder to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Financing Party hereunder or if the Guarantor provides notice of termination of the Guaranty or otherwise repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of the Guaranty.

(b) The Assignment Period will end at the end of last delivery hour on the date specified in the termination notice provided pursuant to Section 2(a), which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clause (a)(1) or (a)(2) above. All Assigned Rights and Obligations shall revert from Financing Party to PPA Buyer upon the expiration or early termination of the Assignment Period, provided that (i) Financing Party shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered or made available to Financing Party prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

(c) The Assignment Period will automatically terminate upon the expiration or early termination of the PPA. All Assigned Rights and Obligations shall revert from Financing Party to PPA Buyer upon the expiration of or early termination of the PPA, provided that (i) Financing Party shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to Financing Party prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

3. Representations and Warranties. The PPA Seller and the PPA Buyer represent and warrant to Financing Party that (a) the PPA is in full force and effect; and (b) to each Party’s respective knowledge, no event or circumstance exists (or would exist with the passage of time or the giving of notice) that would give either of them the right to terminate the PPA or suspend performance thereunder.
4. **Notices.** Any notice, demand, or request required or authorized by this Assignment Agreement to be given by one Party to another Party shall be delivered in accordance with Article 9 of the PPA and to the addresses of each of PPA Seller and PPA Buyer specified in the PPA. PPA Buyer agrees to notify Financing Party of any updates to such notice information, including any updates provided by PPA Seller to PPA Buyer. Notices to Financing Party shall be provided to the following address, as such address may be updated by Financing Party from time to time by notice to the other Parties:

Financing Party

__________________________

Email: _____________

5. **Miscellaneous.** Section 13.2 (Buyer’s Representations and Warranties), Article 18 (Confidential Information), Sections 19.5 (Severability), 19.7 (Counterparts), 19.2 (Amendments), 19.4 (No Agency, Partnership, Joint Venture or Lease), 19.6 (Mobile-Sierra), 19.8 (Electronic Delivery), 19.9 (Binding Effect) and 19.10 (No Recourse to Members of Buyer) of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

6. **U.S. Resolution Stay Provisions.** The Parties hereby confirm that they are adherents to the ISDA 2018 U.S. Resolution Stay Protocol (“ISDA U.S. Stay Protocol”), the terms of the ISDA U.S. Stay Protocol are incorporated into and form a part of this Agreement, and for the purposes of such incorporation, (i) Financing Party shall be deemed to be a Regulated Entity, (ii) each of PPA Buyer and PPA Seller shall be deemed to be an Adhering Party, and (iii) this Agreement shall be deemed a Protocol Covered Agreement. In the event of any inconsistencies between this Agreement and the ISDA U.S. Stay Protocol, the ISDA U.S. Stay Protocol will prevail.

7. **Governing Law, Jurisdiction, Waiver of Jury Trial.**

   (a) **Governing Law.** This Assignment Agreement and the rights and duties of the parties under this Assignment Agreement will be governed by and construed, enforced and performed in accordance with the laws of the State of California, without reference to any conflicts of law provisions that would direct the application of another jurisdiction’s laws; provided, however, that the authority of PPA Buyer to enter into and perform its obligations under this Assignment Agreement shall be determined in accordance with the laws of the State of California.

   (b) **Jurisdiction.** Each party submits to the exclusive jurisdiction of the federal courts of the United States of America for the Southern District of California sitting in the city and county of Los Angeles.

   (c) **Waiver of Right to Trial by Jury.** Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this assignment agreement.

[Remainder of Page Intentionally Blank]
IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

[PPA SELLER]

By: __________________________
Name: ________________________
Title: _________________________

CLEAN POWER ALLIANCE

By: __________________________
Name: ________________________
Title: _________________________

[FINANCING PARTY]

By: __________________________
Name: ________________________
Title: _________________________

Execution and delivery of the foregoing Assignment Agreement is hereby approved.

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: __________________________
Name: ________________________
Title: _________________________
Appendix 1

Assigned Rights and Obligations

PPA: “PPA” means that certain Renewable Power Purchase Agreement dated [____], by and between Clean Power Alliance and [____], a [____] limited liability company, as amended from time to time.

“Assignment Period” means the period beginning on [___________] and extending until [___________], provided that in no event shall the Assignment Period extend past the earlier of (i) the termination of the Assignment Period pursuant to Section 2 of the Assignment Agreement and (ii) the end of the Delivery Term under the PPA; provided that applicable provisions of this Agreement shall continue in effect after termination of the Assignment Period to the extent necessary to enforce or complete, duties, obligations or responsibilities of the Parties arising prior to the termination.

Assigned Product: “Assigned Product” includes (i) Energy and (ii) Green Attributes (including PCC1 RECs); provided, however, that the following are expressly excluded from the Assigned Product and any and all rights and obligations with respect to the following (if any) shall remain with Buyer: Ancillary Services; Capacity Attributes; Resource Adequacy Benefits

Further Information: PPA Seller shall continue to transfer the WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Metered Energy under the PPA pursuant to Section 4.7 of the PPA, provided that the transferee of such WREGIS Certificates may be changed from time to time in accordance with the written instructions of both Financing Party and Clean Power Alliance upon twenty (20) Business Days’ notice, which change shall be effective as of the first day of the next calendar month, unless otherwise agreed. All Assigned Product delivered by PPA Seller to Financing Party shall be a sale made at wholesale, with Financing Party reselling all such Assigned Product.
Appendix 2

Assigned Prepay Quantity

[NOTE: To be set forth in a monthly volume schedule.]
Appendix 3

Form of Financing Party Parent Guaranty
EXHIBIT M
FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “Notice”) is delivered by [SELLER ENTITY] (“Seller”) to Clean Power Alliance of Southern California, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated __________ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.8(b) of the Agreement, Seller hereby provides the below Replacement RA product information:

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<tr>
<th>Unit Information¹</th>
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<tbody>
<tr>
<td>Name</td>
</tr>
<tr>
<td>Location</td>
</tr>
<tr>
<td>CAISO Resource ID</td>
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<td>Unit SCID</td>
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<tr>
<td>Prorated Percentage of Unit Factor</td>
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<td>Resource Type</td>
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<tr>
<td>Point of Interconnection with the CAISO Controlled Grid (&quot;substation or transmission line&quot;)</td>
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<tr>
<td>Path 26 (North or South)</td>
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<td>LCR Area (if any)</td>
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<tr>
<td>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment</td>
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<tr>
<td>Run Hour Restrictions</td>
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<td>Delivery Period</td>
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<table>
<thead>
<tr>
<th>Month</th>
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<th>Unit Contract Quantity (MW)</th>
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<tr>
<td>December</td>
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</tr>
</tbody>
</table>

¹ To be repeated for each unit if more than one.
[SELLER ENTITY]

By: ____________________________
Its: ____________________________

Date: ____________________________
### EXHIBIT N
### NOTICES

**COMMUNITY RENEWABLE ENERGY SERVICES, INC., a California corporation**

<table>
<thead>
<tr>
<th>“Seller”</th>
<th>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority</th>
<th>“Buyer”</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>All Notices:</strong></td>
<td><strong>All Notices:</strong></td>
<td></td>
</tr>
<tr>
<td>Street: 12116 Pendleton St.</td>
<td>Street: 801 S Grand, Suite 400</td>
<td></td>
</tr>
<tr>
<td>City: Sun Valley, CA 91352</td>
<td>City: Los Angeles, CA 90017</td>
<td></td>
</tr>
<tr>
<td>Attn: John Richardson</td>
<td>Attn: Chief Executive Officer</td>
<td></td>
</tr>
<tr>
<td>Phone: 818-381-8300</td>
<td>Phone: (213) 269-5870</td>
<td></td>
</tr>
<tr>
<td>Email: <a href="mailto:john@maintenanceservicesinc.com">john@maintenanceservicesinc.com</a></td>
<td>E-mail: <a href="mailto:tbardacke@cleanpoweralliance.org">tbardacke@cleanpoweralliance.org</a></td>
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<tr>
<td>Attn: Cathy McDonald</td>
<td>Attn: CPA Settlements</td>
<td></td>
</tr>
<tr>
<td>Phone: 818-381-8300</td>
<td>Phone: (213) 269-5870</td>
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<tr>
<td>E-mail: <a href="mailto:cathy@freedomfarms.co">cathy@freedomfarms.co</a></td>
<td>E-mail: <a href="mailto:settlements@cleanpoweralliance.org">settlements@cleanpoweralliance.org</a></td>
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</tr>
<tr>
<td><strong>Scheduling:</strong></td>
<td><strong>Scheduling:</strong></td>
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</tr>
<tr>
<td>Attn: Jason Thompson</td>
<td>Attn: Day Ahead Scheduling</td>
<td></td>
</tr>
<tr>
<td>Phone: 559-480-7864</td>
<td>Phone: (817) 303-1104</td>
<td></td>
</tr>
<tr>
<td>Email: <a href="mailto:jason@dinubaenergy.com">jason@dinubaenergy.com</a></td>
<td>Email: <a href="mailto:TenaskaComm@tnsk.com">TenaskaComm@tnsk.com</a></td>
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<tr>
<td>Attn: Jason Thompson</td>
<td>Attn: Vice President, Power Supply</td>
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</tr>
<tr>
<td>Phone: 559-480-7864</td>
<td>Email: <a href="mailto:energycontracts@cleanpoweralliance.org">energycontracts@cleanpoweralliance.org</a></td>
<td></td>
</tr>
<tr>
<td>Email: <a href="mailto:jason@dinubaenergy.com">jason@dinubaenergy.com</a></td>
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<tr>
<td>Attn: Cathy McDonald</td>
<td>Attn: Vice President, Power Supply</td>
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</tr>
<tr>
<td>Phone: 818-381-8300</td>
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<tr>
<td>E-mail: <a href="mailto:cathy@freedomfarms.com">cathy@freedomfarms.com</a></td>
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<td><strong>Wire Transfer:</strong></td>
<td><strong>Wire Transfer:</strong></td>
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EXHIBIT O

FORM OF CONSENT TO COLLATERAL ASSIGNMENT

This Consent to Collateral Assignment (this “Consent”) is entered into among (i) Clean Power Alliance of Southern California, a California joint powers authority (“CPA”), (ii) [Name of Seller], a [Legal Status of Seller] (the “Project Company”), and (iii) [Name of Collateral Agent], a [Legal Status of Collateral Agent], as Collateral Agent for the secured parties under the Financing Documents referred to below (such secured parties together with their successors permitted under this Consent in such capacity, the “Secured Parties”, and, such agent, together with its successors in such capacity, the “Collateral Agent”). CPA, Project Company and Collateral Agent are hereinafter sometimes referred to individually as a “Party” and jointly as the “Parties”. Capitalized terms used but not otherwise defined in this Consent shall have the meanings ascribed to them in the PPA (as defined below).

RECITALS

The Parties enter into this Consent with reference to the following facts:

A. Project Company and CPA have entered into that certain Renewable Power Purchase Agreement, dated as of [Date] [List all amendments as contemplated by Section 3.4] (“PPA”), pursuant to which Project Company will develop, construct, commission, test and operate the Facility (the “Project”) and sell the Product to CPA, and CPA will purchase the Product from Project Company;

B. As collateral for Project Company’s obligations under the PPA, Project Company has agreed to provide to CPA certain collateral, which may include Performance Security and Development Security and other collateral described in the PPA (collectively, the “PPA Collateral”);

C. Project Company has entered into that certain [Insert description of financing arrangements with Lender], dated as of [Date], among Project Company, the Lenders party thereto and the Collateral Agent (the “Financing Agreement”), pursuant to which, among otherthings, the Lenders have extended commitments to make loans to Project Company;

D. As collateral security for Project Company’s obligations under the Financing Agreement and related agreements (collectively, the “Financing Documents”), Project Company has, among other things, assigned all of its right, title and interest in, to and under the PPA and Project’s Company’s owners have pledged their ownership interest in Project Company (collectively, the “ Assigned Interest”) to the Collateral Agent pursuant to the Financing Documents; and

E. It is a requirement under the Financing Agreement and the PPA that CPA and the other Parties hereto shall have executed and delivered this Consent.

AGREEMENT

In consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereto hereby agree as follows:

Exhibit O - 1
SECTION 1. CONSENT TO ASSIGNMENT, ETC.

1.1 Consent and Agreement.

CPA hereby acknowledges:

   (a) Notice of and consents to the assignment as collateral security to Collateral Agent, for the benefit of the Secured Parties, of the Assigned Interest; and

   (b) The right (but not the obligation) of Collateral Agent in the exercise of its rights and remedies under the Financing Documents, to make all demands, give all notices, take all actions and exercise all rights of Project Company permitted under the PPA (subject to CPA’s rights and defenses under the PPA and the terms of this Consent) and accepts any such exercise; provided, insofar as the Collateral Agent exercises any such rights under the PPA or makes any claims with respect to payments or other obligations under the PPA, the terms and conditions of the PPA applicable to such exercise of rights or claims shall apply to Collateral Agent to the same extent as to Project Company.

1.2 Project Company’s Acknowledgement.

Each of Project Company and Collateral Agent hereby acknowledges and agrees that CPA is authorized to act in accordance with Collateral Agent’s instructions, and that CPA shall bear no liability to Project Company or Collateral Agent in connection therewith, including any liability for failing to act in accordance with Project Company’s instructions.

1.3 Right to Cure.

If Project Company defaults in the performance of any of its obligations under the PPA, or upon the occurrence or non-occurrence of any event or condition under the PPA which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable CPA to terminate or suspend its performance under the PPA (a “PPA Default”), CPA will not terminate or suspend its performance under the PPA until it first gives written notice of such PPA Default to Collateral Agent and affords Collateral Agent the right to cure such PPA Default within the applicable cure period under the PPA, which cure period shall run concurrently with that afforded Project Company under the PPA but such cure period shall not commence until the Collateral Agent receives notice of such PPA Default from CPA. In addition, if Collateral Agent gives CPA written notice prior to the expiration of the applicable cure period under the PPA of Collateral Agent’s intention to cure such PPA Default (which notice shall include a reasonable description of the time during which it anticipates to cure such PPA Default) and is diligently proceeding to cure such PPA Default, notwithstanding the applicable cure period under the PPA, Collateral Agent shall have a period of sixty (60) days (or, if such PPA Default is for failure by the Project Company to pay an amount to CPA which is due and payable under the PPA other than to provide PPA Collateral, thirty (30) days, or, if such PPA Default is for failure by Project Company to provide PPA Collateral, ten (10) Business Days) from the Collateral Agent’s receipt of the notice of such PPA Default from CPA to cure such PPA Default; provided, (a) if possession of the Project is necessary to cure any such non-monetary PPA Default and Collateral Agent has commenced foreclosure proceedings within sixty (60) days after notice of the PPA Default and is diligently pursuing such foreclosure proceedings, Collateral Agent will be allowed a reasonable
time, not to exceed one hundred eighty (180) days after the notice of the PPA Default, to complete such proceedings and cure such PPA Default, and (b) if Collateral Agent is prohibited from curing any such PPA Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein for curing a PPA Default shall be extended for the period of such prohibition, so long as Collateral Agent has diligently pursued removal of such process, stay or injunction. Collateral Agent shall provide CPA with reports concerning the status of efforts to cure a PPA Default upon CPA’s reasonable request.

1.4 Substitute Owner.

Subject to Section 1.7, the Parties agree that if Collateral Agent notifies (such notice, a “Financing Document Default Notice”) CPA that an event of default has occurred and is continuing under the Financing Documents (a “Financing Document Event of Default”) then, upon a judicial foreclosure sale, non-judicial foreclosure sale, deed in lieu of foreclosure or other transfer following a Financing Document Event of Default, Collateral Agent (or its designee) shall be substituted for Project Company (the “Substitute Owner”) under the PPA, and, subject to Sections 1.7(b) and 1.7(c) below, CPA and Substitute Owner will recognize each other as counterparties under the PPA and will continue to perform their respective obligations (including those obligations accruing to CPA and the Project Company prior to the existence of the Substitute Owner) under the PPA in favor of each other in accordance with the terms thereof; provided, before CPA is required to recognize the Substitute Owner, the Substitute Owner must have demonstrated to CPA’s reasonable satisfaction that the Substitute Owner has financial qualifications and operating experience [TBD] (a “Permitted Transferee”). For purposes of the foregoing, CPA shall be entitled to assume that any such purported exercise of rights by Collateral Agent that results in substitution of a Substitute Owner under the PPA is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same. The Collateral Agent shall not be required to be a Substitute Owner in order to take any action permitted by law to collect or enforce any claim for payment to the Project Company under the PPA subject to CPA not having received notice of a contrary claim or a court or regulatory order to the contrary and CPA’s receipt of a Financing Document Default Notice; provided, to the extent CPA fully performs any obligation due to the Project Company under the PPA, CPA shall be deemed to have discharged and fulfilled all of its duties to perform such obligation under the PPA (whether or not CPA was required to perform such obligations to the Facility Company or directly to, or for the benefit of, the Collateral Agent).

1.5 Replacement Agreements.

Subject to Section 1.7, if the PPA is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company, its owner(s) or guarantor(s), and if Collateral Agent or its designee directly or indirectly takes possession of, or title to, the Project (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) (“Replacement Owner”), CPA shall, and Collateral Agent shall cause Replacement Owner to, enter into a new agreement with one another for the balance of the obligations under the PPA remaining to be performed having terms substantially the same as the terms of the PPA with respect to the remaining Term (“Replacement PPA”); provided, before CPA
is required to enter into a Replacement PPA, the Replacement Owner must have demonstrated to CPA’s reasonable satisfaction that the Replacement Owner satisfies the requirements of a Permitted Transferee. For purposes of the foregoing, CPA is entitled to assume that any such purported exercise of rights by Collateral Agent that results in a Replacement Owner is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same. Notwithstanding the execution and delivery of a Replacement PPA, to the extent CPA is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the PPA, CPA may suspend performance of its obligations under such Replacement PPA, unless and until all PPA Defaults of Project Company under the PPA or Replacement PPA have been cured.

1.6 Transfer.

Subject to Section 1.7, a Substitute Owner or a Replacement Owner may assign all of its interest in the Project and the PPA and a Replacement PPA to a natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority or other entity (a “Person”) to which the Project is transferred; provided, the proposed transferee shall have demonstrated to CPA’s reasonable satisfaction that such proposed transferee satisfies the requirements of a Permitted Transferee.

1.7 Assumption of Obligations.

(a) Transferee.

Any transferee under Section 1.6 shall expressly assume in a writing reasonably satisfactory to CPA all of the obligations of Project Company, Substitute Owner or Replacement Owner under the PPA or Replacement PPA, as applicable, including posting and collateral assignment of the PPA Collateral. Upon such assignment and the cure of any outstanding PPA Default, and payment of all other amounts due and payable to CPA in respect of the PPA or such Replacement PPA, the transferor shall be released from any further liability under the PPA or Replacement PPA, as applicable.

(b) Substitute Owner.

Subject to Section 1.7(c), any Substitute Owner pursuant to Section 1.4 shall be required to perform Project Company’s obligations under the PPA, including posting and collateral assignment of the PPA Collateral; provided, the obligations of such Substitute Owner shall be no more than those of Project Company under the PPA.

(c) No Liability.

CPA acknowledges and agrees that neither Collateral Agent nor any Secured Party shall have any liability or obligation under the PPAs as a result of this Consent (except to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner) nor shall Collateral Agent or any other Secured Party be obligated or required to (i) perform any of Project Company’s obligations under the PPA, except as provided in Sections 1.7(a) and 1.7(b) and to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner, or (ii) take any action to collect

Exhibit O - 4
or enforce any claim for payment assigned under the Financing Documents. If Collateral Agent becomes a Substitute Owner pursuant to Section 1.4 or enters into a Replacement PPA, Collateral Agent shall not have any personal liability to CPA under the PPA or Replacement PPA and the sole recourse of CPA in seeking enforcement of such obligations against Collateral Agent shall be to the aggregate interest of the Secured Parties in the Project; provided, such limited recourse shall not limit CPA’s right to seek equitable or injunctive relief against Collateral Agent, or CPA’s rights with respect to any offset rights expressly allowed under the PPA, a Replacement PPA or the PPA Collateral.

1.8 Delivery of Notices.

CPA shall deliver to Collateral Agent, concurrently with the delivery thereof to Project Company, a copy of each notice, request or demand given by CPA to Project Company pursuant to the PPA relating to (a) a PPA Default by Project Company under the PPA, (b) any claim regarding Force Majeure by CPA under the PPA, (c) any notice of dispute under the PPA, (d) any notice of intent to terminate or any termination notice, and (e) any matter that would require the consent of Collateral Agent pursuant to Section 1.11 or any other provision of this Consent. Collateral Agent acknowledges that delivery of such notice, request and demand shall satisfy CPA’s obligation to give Collateral Agent a notice of PPA Default under Section 1.3. Collateral Agent shall deliver to CPA, concurrently with delivery thereof to Project Company, a copy of each notice, request or demand given by Collateral Agent to Project Company pursuant to the Financing Documents relating to a default by Project Company under the Financing Documents.

1.9 Confirmations.

CPA will, as and when reasonably requested by Collateral Agent from time to time, confirm in writing matters relating to the PPA (including the performance of same by Project Company); provided, such confirmation may be limited to matters of which CPA is aware as of the time the confirmation is given and such confirmations shall be without prejudice to any rights of CPA under the PPA as between CPA and Project Company.

1.10 Exclusivity of Dealings.

Except as provided in Sections 1.3, 1.4, 1.8, 1.9 and 2.1, unless and until CPA receives a Financing Document Default Notice, CPA shall deal exclusively with Project Company in connection with the performance of CPA’s obligations under the PPA. From and after such time as CPA receives a Financing Document Default Notice and until a Substitute Owner is substituted for Project Company pursuant to Section 1.4, a Replacement PPA is entered into or the PPA is transferred to a Person to whom the Project is transferred pursuant to Section 1.6, CPA shall, until Collateral Agent confirms to CPA in writing that all obligations under the Financing Documents are no longer outstanding, deal exclusively with Collateral Agent in connection with the performance of CPA’s obligations under the PPA, and CPA may irrevocably rely on instructions provided by Collateral Agent in accordance therewith to the exclusion of those provided by any other Person.

1.11 No Amendments.

To the extent permitted by Laws, CPA agrees that it will not, without the prior written consent of Collateral Agent (not to be unreasonably withheld, delayed or conditioned) (a) enter into any
material supplement, restatement, novation, extension, amendment or modification of the PPA (b) terminate or suspend its performance under the PPA (except in accordance with Section 1.3) or (c) consent to or accept any termination or cancellation of the PPA by Project Company.

SECTION 2. PAYMENTS UNDER THE PPA

2.1 Payments.

Unless and until CPA receives written notice to the contrary from Collateral Agent, CPA will make all payments to be made by it to Project Company under or by reason of the PPA directly to Project Company. CPA, Project Company, and Collateral Agent acknowledge that CPA will be deemed to be in compliance with the payment terms of the PPA to the extent that CPA makes payments in accordance with Collateral Agent’s instructions.

2.2 No Offset, Etc.

All payments required to be made by CPA under the PPA shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the PPA.

SECTION 3. REPRESENTATIONS AND WARRANTIES OF CPA

CPA makes the following representations and warranties as of the date hereof in favor of Collateral Agent:

3.1 Organization.

CPA is a joint powers authority and community choice aggregator duly organized and validly existing under the laws of the state of California, and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. CPA has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

3.2 Authorization.

The execution, delivery and performance by CPA of this Consent and the PPA have been duly authorized by all necessary corporate or other action on the part of CPA and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of CPA which, if not obtained, will prevent CPA from performing its obligations hereunder or under the PPA except approvals or consents which have previously been obtained and which are in full force and effect.

3.3 Execution and Delivery; Binding Agreements.

Each of this Consent and the PPA is in full force and effect, have been duly executed and delivered on behalf of CPA by the appropriate officers of CPA, and constitute the legal, valid and binding
obligation of CPA, enforceable against CPA in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors’ rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

3.4 No Default or Amendment.

Except as set forth in Schedule A attached hereto: (a) Neither CPA nor, to CPA’s actual knowledge, Project Company, is in default of any of its obligations under the PPA; (b) CPA and, to CPA’s actual knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the PPA; (c) to CPA’s actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CPA or Project Company to terminate or suspend its obligations under the PPA; and (d) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

3.5 No Previous Assignments.

CPA has no notice of, and has not consented to, any previous assignment by Project Company of all or any part of its rights under the PPA, except as previously disclosed in writing and consented to by CPA.

SECTION 4. REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY

Project Company makes the following representations and warranties as of the date hereof in favor of the Collateral Agent and CPA:

4.1 Organization.

Project Company is a [Legal Status of Seller] duly organized and validly existing under the laws of the state of its organization, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or its ability to transact its business. Project Company has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

4.2 Authorization.

The execution, delivery and performance of this Consent by Project Company, and Project Company’s assignment of its right, title and interest in, to and under the PPA to the Collateral Agent pursuant to the Financing Documents, have been duly authorized by all necessary corporate or other action on the part of Project Company.

4.3 Execution and Delivery; Binding Agreement.
Consent is in full force and effect, has been duly executed and delivered on behalf of Project Company by the appropriate officers of Project Company, and constitutes the legal, valid and binding obligation of Project Company, enforceable against Project Company in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors’ rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

4.4 No Default or Amendment.

Except as set forth in Schedule B attached hereto: (a) neither Project Company nor, to Project Company’s actual knowledge, CPA, is in default of any of its obligations thereunder; (b) Project Company and, to Project Company’s actual knowledge, CPA, has complied with all conditions precedent to the effectiveness of its obligations under the PPA; (c) to Project Company’s actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CPA or Project Company to terminate or suspend its obligations under the PPA; and (d) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

4.5 No Previous Assignments.

Project Company has not previously assigned all or any part of its rights under the PPA.

SECTION 5. REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT

Collateral Agent makes the following representations and warranties as of the date hereof in favor of CPA and Project Company:

5.1 Authorization.

The execution, delivery and performance of this Consent by Collateral Agent have been duly authorized by all necessary corporate or other action on the part of Collateral Agent and Secured Parties.

5.2 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Collateral Agent by the appropriate officers of Collateral Agent, and constitutes the legal, valid and binding obligation of Collateral Agent as Collateral Agent for the Secured Parties, enforceable against Collateral Agent (and the Secured Parties to the extent applicable) in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors’ rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

SECTION 6. MISCELLANEOUS

6.1 Notices.
All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the Party or Parties to whom such notice is addressed, shall refer on their face to the PPA (although failure to so refer shall not render any such notice or communication ineffective), shall be sent by first class mail, by personal delivery or by a nationally recognized courier service, and shall be directed (a) if to CPA or Project Company, in accordance with [Notice Section of the PPA] of the PPA, (b) if to Collateral Agent, to [Collateral Agent Name], [Collateral Agent Address], Attn: [Collateral Agent Contact Information], Telephone: [___], Fax: [___], and (c) to such other address or addressee as any such Party may designate by notice given pursuant hereto.

6.2 Governing Law; Submission to Jurisdiction.

(a) THIS CONSENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND THIS CONSENT AND ALL MATTERS ARISING OUT OF THIS CONSENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO ANY CONFLICTS OF LAWS PROVISIONS THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.

(b) All disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Consent shall be governed by the dispute resolution provisions of the PPA. Subject to the foregoing, any legal action or proceeding with respect to this Consent and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of California or of the United States of America for the Central District of California, and, by execution and delivery of this Consent, each Party hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Each Party further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to its notice address provided pursuant to Section 6.1 hereof. Each Party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Consent brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall affect the right of any Party to serve process in any other manner permitted by law.

6.3 Headings Descriptive.

The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

6.4 Severability.

In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

6.5 Amendment, Waiver.
Neither this Consent nor any of the terms hereof may (a) be terminated, amended, supplemented or modified, except by an instrument in writing signed by CPA, Project Company and Collateral Agent or (b) waived, except by an instrument in writing signed by the waiving Party.

6.6 Termination.

Each Party’s obligations hereunder are absolute and unconditional, and no Party has any right, and shall have no right, to terminate this Consent or to be released, relieved or discharged from any obligation or liability hereunder until CPA has been notified by Collateral Agent that all of the obligations under the Financing Documents shall have been satisfied in full (other than contingent indemnification obligations) or, with respect to the PPA or any Replacement PPA, its obligations under such PPA or Replacement PPA have been fully performed.

6.7 Successors and Assigns.

This Consent shall be binding upon each Party and its successors and assigns permitted under and in accordance with this Consent, and shall inure to the benefit of the other Parties and their respective successors and assignee permitted under and in accordance with this Consent. Each reference to a Person herein shall include such Person’s successors and assigns permitted under and in accordance with this Consent.

6.8 Further Assurances.

CPA hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

6.9 Waiver of Trial by Jury.

TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT OR ANY MATTER ARISING HEREUNDER. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

6.10 Entire Agreement.

This Consent and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Consent and any such agreement, document or instrument, the terms, conditions and provisions of this Consent shall prevail.

6.11 Effective Date.

This Consent shall be deemed effective as of the date upon which the last Party executes this Consent.
6.12 Counterparts; Electronic Signatures.

This Consent may be executed in one or more counterparts, each of which will be deemed to be an original of this Consent and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Consent and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Consent as to the Parties and may be used in lieu of the original Consent for all purposes.

[Remainder of Page Left Intentionally Blank.]
IN WITNESS WHEREOF, the Parties hereto have caused this Consent to be duly executed and delivered by their duly authorized officers on the dates indicated below their respective signatures.

COMMUNITY RENEWABLE ENERGY SERVICES, INC.,
a California corporation.

By:

___________________________________
[Name]
[Title]
Date: ___________________________

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA,
a California joint powers authority.

By:

___________________________________
[Name]
[Title]
Date: ___________________________

[NAME OF COLLATERAL AGENT],
[Legal Status of Collateral Agent].

By:

___________________________________
[Name]
[Title]
Date: ___________________________
SCHEDULE A

[Describe any disclosures relevant to representations and warranties made in Section 3.4]
EXHIBIT P

CPM Adjustment Factors

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EXHIBIT Q

Supply Chain Code of Conduct

Buyer is committed to ensuring that the fundamental human rights of workers are protected, including addressing the potential risks of forced labor, child labor, servitude, human trafficking and slavery across our portfolio.

Our requirements and expectations for Seller’s supply chain are detailed below in our Supply Chain Code of Conduct (“Supply Chain Code”). Seller must comply with all applicable Laws and this Supply Chain Code, even when this Supply Chain Code exceeds the requirements of applicable Law.

These standards are derived from the United Nations Guiding Principles on Business and Human Rights, the Core Conventions of the International Labour Organization (“ILO”), including the ILO Declaration on Fundamental Principles and Rights at Work, the Solar Energy Industries Association Solar Industry Commitment to Environmental & Social Responsibility, and the Responsible Business Alliance Code of Conduct.

1. Freely Chosen Employment
   Forced, bonded (including debt bondage) or indentured labor, involuntary or exploitative prison labor, slavery or trafficking of persons is not permitted. This includes transporting, harboring, recruiting, transferring, or receiving persons by means of threat, force, coercion, abduction or fraud for labor or services. There shall be no unreasonable restrictions on workers’ freedom of movement in the facility in addition to unreasonable restrictions on entering or exiting company provided facilities including, if applicable, workers’ dormitories or living quarters. All work must be voluntary, and workers shall be free to leave work at any time or terminate their employment without penalty if reasonable notice is given as per worker’s contract. Employers, agents, and sub-agents’ may not hold or otherwise destroy, conceal, or confiscate identity or immigration documents, such as government-issued identification, passports, or work permits. Employers can only hold documentation if such holdings are required by law. In this case, at no time should workers be denied access to their documents. Workers shall not be required to pay employers’ agents or sub-agents’ recruitment fees or other related fees for their employment. If any such fees are found to have been paid by workers, such fees shall be repaid to the worker.

2. Young Workers
   Child labor is not to be used in any stage of manufacturing. The term “child” refers to any person under the age of 15, or under the age for completing compulsory education, or under the minimum age for employment in the country, whichever is greatest. Suppliers shall implement an appropriate mechanism to verify the age of workers. The use of legitimate workplace learning programs, which comply with all laws and regulations, is supported. Workers under the age of 18 shall not perform work that is likely to jeopardize their health or safety, including night shifts and overtime. Suppliers shall ensure proper management of student workers through proper maintenance of student records, rigorous due diligence of educational partners, and protection of students’ rights in accordance with applicable laws and regulations. Suppliers shall provide appropriate support and training to all student

Exhibit Q - 1
workers. In the absence of local law, the wage rate for student workers, interns, and apprentices shall be at least the same wage rate as other entry-level workers performing equal or similar tasks. If child labor is identified, assistance/remediation is provided.

3. Working Hours
Studies of business practices clearly link worker strain to reduced productivity, increased turnover, and increased injury and illness. Working hours are not to exceed the maximum set by local law. Further, a workweek should not be more than 60 hours per week, including overtime, except in emergency or unusual situations. All overtime must be voluntary. Workers shall be allowed at least one day off every seven days.

4. Wages and Benefits
Compensation paid to workers shall comply with all applicable wage laws, including those relating to minimum wages, overtime hours and legally mandated benefits. In compliance with local laws, workers shall be compensated for overtime at pay rates greater than regular hourly rates. Deductions from wages as a disciplinary measure shall not be permitted. For each pay period, workers shall be provided with a timely and understandable wage statement that includes sufficient information to verify accurate compensation for work performed. All use of temporary, dispatch and outsourced labor will be within the limits of the local law.

5. Humane Treatment
There is to be no harsh or inhumane treatment including violence, gender-based violence, sexual harassment, sexual abuse, corporal punishment, mental or physical coercion, bullying, public shaming, or verbal abuse of workers; nor is there to be the threat of any such treatment. Disciplinary policies and procedures in support of these requirements shall be clearly defined and communicated to workers.

6. Non-Discrimination/Non-Harassment
 Suppliers should be committed to a workplace free of harassment and unlawful discrimination. Companies shall not engage in discrimination or harassment based on race, color, age, gender, sexual orientation, gender identity and expression, ethnicity or national origin, disability, pregnancy, religion, political affiliation, union membership, covered veteran status, protected genetic information or marital status in hiring and employment practices such as wages, promotions, rewards, and access to training. Workers shall be provided with reasonable accommodation for religious practices. In addition, workers or potential workers should not be subjected to medical tests that could be used in a discriminatory way or otherwise in violation of applicable law. This was drafted in consideration of ILO Discrimination (Employment and Occupation) Convention (No.111).

7. Freedom of Association
In conformance with local law, Suppliers shall respect the right of all workers to form and join trade unions of their own choosing, to bargain collectively, and to engage in peaceful assembly as well as respect the right of workers to refrain from such activities. Workers and/or their representatives shall be able to openly communicate and share ideas and concerns with management regarding working conditions and management practices without fear of discrimination, reprisal, intimidation, or harassment.

Exhibit Q - 2
8. **Restricted Jurisdictions**
Supplier shall not manufacture or produce products in the Xinjiang Uyghur Autonomous Region of China, or knowingly procure goods and services mined, produced or manufactured in the same.
# EXHIBIT R

## MATERIAL PERMITS

<table>
<thead>
<tr>
<th>No.</th>
<th>Permits</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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<tr>
<td>2</td>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT T

Force Majeure and/or Development Cure Period Claim Form

Instructions

A. Please review Article 10 and Exhibit B (if applicable) of the Power Purchase Agreement prior to filling out the form.

B. Fill out the form completely and return to your assigned Contract Manager at CPA.

Seller: [Name] Project: [Name]

Current Guaranteed Construction Start Date: [Date]

New Guaranteed Construction Start Date (if Seller’s claims are valid): [Date]

Guaranteed Commercial Operation Date: [Date]

New Guaranteed Commercial Operation Date (if Seller’s claims are valid): [Date]

1. Please describe the claimed Force Majeure Event or other event giving rise to the claimed Development Cure Period delay(s) (the “Claimed Event”), including its cause, date of commencement and date it ended or is anticipated to end.

2. Please specify the extent of the delay or prevented performance caused by the Claimed Event, including the relief claimed thereby. Describe how the claimed relief was calculated/determined, accounting for individual developments causing such delay or prevented performance.

3. With respect to a Claimed Event other than a Force Majeure Event, please describe the commercially reasonable efforts taken by Seller to prevent such event.

4. Please describe the commercially reasonable efforts taken to mitigate the delays or nonperformance caused by the Claimed Event and specify how such efforts reduced the delay days or nonperformance that would otherwise have occurred absent such mitigation.
5. Please attach supporting documentation, including without limitation:

- Force Majeure notices or other correspondence received from suppliers and/or contractors that describe the basis for and extent of the Claimed Event.

- Documentation, contracts, and/or correspondence with suppliers and/or contractors evidencing the claiming Party’s mitigation efforts.

- Project schedule and/or GANNT charts that demonstrate the effect of the Claimed Event on the Guaranteed commercial Operation Date.

By signing this Claim form, I attest and affirm that I am authorized to sign this form on behalf of the Seller, that I have reviewed this Claim, including any attached documentation, and that the facts and statements made in this Claim are true and correct to the best of my knowledge.

Signed: _________________

Name: _________________

Title: _________________

Date: _________________
EXHIBIT U

Operating Restrictions

1. The Facility cannot run at less than 7 MW for more than 30 consecutive minutes.
EXHIBIT V

Form of Biomass Conversion Facility Report

[See attached]
### Section 1: Biomass Conversion Facility Information - PRC 44107(b)(1)

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<th>Facility Name</th>
<th>Report Year</th>
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<table>
<thead>
<tr>
<th>Facility Address</th>
<th>Owner Name</th>
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<table>
<thead>
<tr>
<th>Facility Phone #</th>
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<table>
<thead>
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<th>Operator Name</th>
<th>Owner Phone #</th>
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<table>
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<tr>
<th>Operator Phone #</th>
<th>Owner Address</th>
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<table>
<thead>
<tr>
<th>Operator Address</th>
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<tbody>
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</table>
Section 2: Accepted Amounts of Material Types at the Facility and the Sources

2a: Accepted Material Types (List all materials accepted at the facility, the tons, and the source info) - PRC 44107(b)(2)

Select whether the tons accepted are bone dry or wet and one of four source categories the material came from either urban, agriculture, mill residue, or in-forestry.

<table>
<thead>
<tr>
<th>Type of Material Accepted</th>
<th>Tons Accepted</th>
<th>Tons Type</th>
<th>Source Category (Select one)</th>
</tr>
</thead>
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<tr>
<td></td>
<td></td>
<td>Bone Dry</td>
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<tr>
<td></td>
<td></td>
<td>Wet</td>
<td>Agriculture</td>
</tr>
<tr>
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<td></td>
<td>Mill Residue</td>
</tr>
<tr>
<td></td>
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<td></td>
<td>In-Forestry</td>
</tr>
<tr>
<td>2</td>
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<td>Wet</td>
<td>Urban</td>
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<td></td>
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<td></td>
<td>Agriculture</td>
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<td>Mill Residue</td>
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<td>In-Forestry</td>
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<td>Agriculture</td>
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<td>Mill Residue</td>
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<td>In-Forestry</td>
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<td>4</td>
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<td>Urban</td>
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<td>Agriculture</td>
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<td>Mill Residue</td>
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<td>In-Forestry</td>
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<tr>
<td>5</td>
<td>Bone Dry</td>
<td>Wet</td>
<td>Urban</td>
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<td>Agriculture</td>
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<td></td>
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<td>Mill Residue</td>
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<td>In-Forestry</td>
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<tr>
<td>6</td>
<td>Bone Dry</td>
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<td>In-Forestry</td>
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<td>7</td>
<td>Bone Dry</td>
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<td></td>
<td></td>
<td>Mill Residue</td>
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<td></td>
<td></td>
<td></td>
<td>In-Forestry</td>
</tr>
</tbody>
</table>

Total Tons Accepted
2b: Source of Materials Accepted (List each material type received for the year and the name and physical address of the source that sent the material. Please do not provide operator or owner addresses or P.O. boxes. If no source is provided list the reason) - PRC 44107(b)(3)

<table>
<thead>
<tr>
<th>Material Type</th>
<th>Name of Source</th>
<th>Source Address/Location</th>
<th>Source Info Provided Y/N</th>
<th>Reason for No Name and Address/Location</th>
</tr>
</thead>
<tbody>
<tr>
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</table>

Section 3: Rejected Material Types and Sources

3a: Rejected Material Types (List the type and amount of material that was rejected by the facility and the reason for rejection) - PRC 44107(b)(4)

<table>
<thead>
<tr>
<th>Type of Material Rejected</th>
<th>Tons Rejected</th>
<th>Reason why Material was Rejected</th>
</tr>
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<tbody>
<tr>
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Total Tons Rejected

<table>
<thead>
<tr>
<th>Total Tons Rejected</th>
</tr>
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<tbody>
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</tbody>
</table>
### 3b: Sources of Materials Rejected
(List each material type rejected for the year and the name and address of the source that sent the material. If no source information is provided list the reason) - PRC 44107(b)(5)

<table>
<thead>
<tr>
<th>Type of Material Rejected</th>
<th>Name of Source</th>
<th>Source Address/Location†</th>
<th>Source Info Provided Y/N</th>
<th>Reason for No Name and Address/Location</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

### Section 4: Ash and Other ByProduct End Users
(List end user name and end user address/physical location for each ash or other byproducts. If no end user information is provided list the reason) - PRC 44107(b)(6)

<table>
<thead>
<tr>
<th>Ash or Other ByProducts</th>
<th>Name of End User</th>
<th>End User Address/Location†</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

† Please provide the physical address/location (Street, city, state, and zip code) of sources and end users for Sections 3 and 4.

### Operator and Owner Signature
(I certify that the information provided is accurate under penalty of perjury) - PRC 44107(b)(7)

Operator Signature __________________________ Owner Signature __________________________
ENERGY STORAGE AGREEMENT

COVER SHEET

Seller: Sagebrush ESS IIB, LLC

Buyer: Clean Power Alliance of Southern California, a California joint powers authority

Description of Facility: A 40 MW / 160 MWh stand-alone, battery energy storage system facility, as further described in Exhibit A, and subject to reduction in size as described in Exhibit B.

Milestones:

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Expected Date for Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evidence of Site Control</td>
<td>Completed</td>
</tr>
<tr>
<td>Documentation of Conditional Use Permit if required:</td>
<td>N/A</td>
</tr>
<tr>
<td>CEQA [ ] Cat Ex, [ ] Neg Dec, [ ] Mitigated Neg Dec, [x] EIR</td>
<td></td>
</tr>
<tr>
<td>Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities</td>
<td>Complete</td>
</tr>
<tr>
<td>Executed Interconnection Agreement</td>
<td></td>
</tr>
<tr>
<td>Financial Close</td>
<td></td>
</tr>
<tr>
<td>Expected Construction Start Date</td>
<td></td>
</tr>
<tr>
<td>Initial Synchronization</td>
<td>4/1/24</td>
</tr>
<tr>
<td>Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider)</td>
<td>N/A</td>
</tr>
<tr>
<td>Expected Date of CAISO Commercial Operation</td>
<td>5/1/24</td>
</tr>
<tr>
<td>Expected Commercial Operation Date</td>
<td>6/1/24</td>
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</table>

Delivery Term: Fifteen (15) Contract Years

Guaranteed Capacity: 40 MW of Installed Capacity
**Guaranteed Efficiency Rate:**

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Guaranteed Efficiency Rate</th>
</tr>
</thead>
<tbody>
<tr>
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<td>14</td>
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<td>15</td>
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</table>

**Guaranteed Construction Start Date:** February 1, 2024

**Guaranteed Commercial Operation Date:** June 1, 2024

**Storage Rate:**

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Storage Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 15</td>
<td>$XX/kW-mo. (flat) with no escalation</td>
</tr>
</tbody>
</table>
**Product:**
- Facility Energy
- Installed Capacity and Effective Capacity
- Ancillary Services
- Capacity Attributes

**Anticipated Flexible Capacity:** Amount: 80 MW

**Scheduling Coordinator:** Buyer or Buyer’s designee

**Security Amount:**
- Development Security: $105/kW of Guaranteed Capacity
- Performance Security: $105/kW of Installed Capacity
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<tr>
<th>ARTICLE</th>
<th>PAGE</th>
</tr>
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<tbody>
<tr>
<td><strong>1</strong></td>
<td>DEFINITIONS</td>
</tr>
<tr>
<td>1.1</td>
<td>Contract Definitions</td>
</tr>
<tr>
<td>1.2</td>
<td>Rules of Interpretation</td>
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<td>TERM; CONDITIONS PRECEDENT</td>
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<td>Contract Term</td>
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<td>Development; Construction; Progress Reports</td>
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# Article 8: Invoicing and Payment; Credit

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<tbody>
<tr>
<td>8.1 Invoicing</td>
<td>37</td>
</tr>
<tr>
<td>8.2 Payment</td>
<td>38</td>
</tr>
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<td>8.3 Books and Records</td>
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<tr>
<td>8.6 Netting of Payments</td>
<td>39</td>
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<td>8.7 Seller’s Development Security</td>
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<td>8.8 Seller’s Performance Security</td>
<td>39</td>
</tr>
<tr>
<td>8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral</td>
<td>39</td>
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# Article 9: Notices

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- Exhibit E  Progress Reporting Form
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- Exhibit U  Supply Chain Code of Conduct
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- Exhibit W  Force Majeure Event and/or Development Cure Period Claim Form
- Exhibit X  Select BESS Supply Agreement Terms
ENERGY STORAGE AGREEMENT

This Energy Storage Agreement (“Agreement”) is entered into as of [_________] (the “Effective Date”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “Party” and jointly as the “Parties.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Seller intends to develop, design, construct, own or otherwise control, and operate the Facility; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product;

WHEREAS, Buyer intends to apply the Facility’s NQC toward Buyer’s clean energy mid-term reliability procurement obligations set forth in CPUC D.21-06-035 (as may be revised by further decisions “MTR Requirements”);

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1
DEFINITIONS

1.1 Contract Definitions. The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“AC” means alternating current.

“Accepted Compliance Costs” has the meaning set forth in Section 3.6(c).

“Affiliate” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“Agreement” has the meaning set forth in the Preamble and includes the Cover Sheet and any Exhibits, schedules and any written supplements hereto.
“Ancillary Services” means spinning reserve, non-spinning reserve, regulation up, regulation down, voltage support, and any other ancillary services that the Facility is capable of providing consistent with the Operating Restrictions set forth in Exhibit Q, as each is defined in the CAISO Tariff, and as listed in Exhibit Q, including any ancillary services added pursuant to Section 3.3.

“Annual Capacity Availability” has the meaning set forth in Exhibit P.

“Automated Dispatch System” or “ADS” has the meaning set forth in the CAISO Tariff.

“Automatic Generation Control” or “AGC” has the meaning set forth in the CAISO Tariff.

“Auxiliary Use” means the Energy that is used (including Energy used during the charging or discharging of the Facility) within the Facility to power the motors, temperature control systems, control systems and other electrical loads that are integral to the charging or discharging of the Facility.

“Availability Notice” means Seller’s availability forecasts issued pursuant to Section 4.10 with respect to the Available Effective Capacity and Available Storage Capability, which shall include any updates from Seller with respect to Facility outages or availability as reported to CAISO (including as reported in OMS).

“Availability Standards” has the meaning set forth in the CAISO Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the CAISO Tariff.

“Available Capacity” means the capacity of the Facility, expressed in whole MWs, that is mechanically available to charge and discharge Energy and provide Ancillary Services.

“Available Effective Capacity” has the meaning in Exhibit P.

“Available Storage Capability” has the meaning in Exhibit P.

“Bankrupt” or “Bankruptcy” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

“Battery Charging Factor” means the percentage SOC of the Facility after the first five and one-half (5.5) hours of the charging phase of the applicable Capacity Test.
“**Battery Discharging Factor**” means one (1) minus the percentage SOC of the Facility after the time period comprised of the first four (4) hours of the discharging phase of the applicable Capacity Test plus the time required for ramping the Facility from 0 MW to the maximum discharging level as limited by CAISO at the beginning of such discharging phase.

“**Bridge Capacity**” has the meaning set forth in Section 3.4(e).

“**Bridge Capacity Contract Quantity**” has the meaning set forth in Section 3.4(e)(i).

“**Bridge Capacity Delivery Period**” has the meaning set forth in Section 3.4(e)(i).

“**Bridge Capacity Price**” has the meaning set forth in Section 3.4(e)(v).

“**Business Day**” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

“**Buyer**” has the meaning set forth on the Cover Sheet.

“**Buyer Default**” means an Event of Default of Buyer.

“**Buyer Dispatched Test**” has the meaning in Section 4.4(c).

“**Buyer’s Indemnified Parties**” has the meaning set forth in Section 18.2.

“**CAISO**” means the California Independent System Operator Corporation or any successor entity performing similar functions.

“**CAISO Certification**” means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all Ancillary Services, PMAX, and PMIN associated with such storage units, that are applicable to the Facility.

“**CAISO Charges Invoice**” has the meaning set forth in Exhibit D.

“**CAISO Commercial Operation**” has the same meaning as “Commercial Operation” as defined in the CAISO Tariff.

“**CAISO Dispatch**” means any Charging Notice or Discharging Notice given by the CAISO to the Facility, whether through ADS, AGC or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the Facility to charge or discharge at a specific MW rate for a specified period of time or amount of MWh.

“**CAISO Grid**” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“**CAISO Tariff**” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including...
the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

“Calculation Interval” has the meaning set forth in Exhibit P.

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can charge or discharge and deliver to the Delivery Point at a particular moment and that can be purchased, sold or conveyed under CAISO or CPUC market rules, including Resource Adequacy Benefits.

“Capacity Availability Factor” has the meaning set forth in Exhibit C.

“Capacity Availability Payment True-Up” has the meaning set forth in Exhibit C.

“Capacity Availability Payment True-Up Amount” has the meaning set forth in Exhibit C.

“Capacity Damages” has the meaning set forth in Section 5 of Exhibit B.

“Capacity Test” or “CT” means any test or retest of the Facility to establish the Installed Capacity, Effective Capacity, Efficiency Rate or any other test conducted pursuant to Exhibit O.

“Change of Control” means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; provided, in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

“Charging Energy” means the Energy delivered to the Delivery Point pursuant to a Charging Notice, as measured by the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses.

“Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer, Buyer’s SC or the CAISO to Seller, directing the Facility to charge at a specific MW rate for a specified period of time or amount of MWh; provided, any such operating instruction shall be in accordance with the Operating Restrictions. Any instruction to charge the Facility pursuant to a Buyer Dispatched Test shall be considered a Charging Notice.

“COD Certificate” has the meaning set forth in Exhibit B.
“Commercial Operation” has the meaning set forth in Exhibit B.

“Commercial Operation Capacity Test” means the Capacity Test conducted in connection with Commercial Operation of the Facility, including any additional Capacity Test for additional capacity installed after the Commercial Operation Date pursuant to Section 5 of Exhibit B.

“Commercial Operation Date” means the date Commercial Operation is achieved.

“Commercial Operation Delay Damages” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) ninety (90).

“Communications Protocols” means certain Operating Restrictions developed by the Parties pursuant to Exhibit Q that involve procedures and protocols regarding communication with respect to the operation of the Facility pursuant to this Agreement.

“Compliance Actions” has the meaning set forth in Section 3.6(a).

“Compliance Expenditure Cap” has the meaning set forth in Section 3.6.

“Confidential Information” has the meaning set forth in Section 18.1.

“Consent to Collateral Assignment” has the meaning set forth in Section 14.2.

“Construction Start” has the meaning set forth in Exhibit B.

“Construction Start Date” has the meaning set forth in Exhibit B.

“Contract Term” has the meaning set forth in Section 2.1.

“Contract Year” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

“Cover Sheet” means the cover sheet to this Agreement, which is incorporated into this Agreement.

“COVID-19” means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat such disease.

“CPM Adjustment Factor” means, for any RA Shortfall Month, the percentage for the corresponding calendar month set forth in Exhibit T.
“CPM Price” has the meaning set forth in Section 3.5(b).

“CPM Soft Offer Cap” has the meaning set forth in the CAISO Tariff.

“CPUC” means the California Public Utilities Commission, or successor entity.

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“Cure Plan” has the meaning set forth in Section 11.1(b)(iii).

“Curtailment Order” means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected;

(b) a curtailment ordered by the Transmission Provider for reasons including, but not limited to, any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider’s electric system integrity or the integrity of other systems to which the Transmission Provider is connected;

(c) a curtailment ordered by CAISO or the Transmission Provider due to a Transmission System Outage; or

(d) a curtailment in accordance with Seller’s obligations under its Interconnection Agreement with the Transmission Provider or distribution operator.

“Daily Delay Damages” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

“Damage Payment” means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount set forth in Section 11.3(a).

“Day-Ahead Market” has the meaning set forth in the CAISO Tariff.

“Day-Ahead Schedule” has the meaning set forth in the CAISO Tariff.

“Defaulting Party” has the meaning set forth in Section 11.1(a).
“Delay Damages” means Daily Delay Damages and Commercial Operation Delay Damages.

“Delivery Point” has the meaning set forth in Exhibit A.

“Delivery Term” shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

“Development Cure Period” has the meaning set forth in Exhibit B.

“Development Security” means (a) cash or (b) a Letter of Credit in the amount specified for the Development Security on the Cover Sheet.

“Discharging Notice” means the operating instruction, and any subsequent updates, given by Buyer, Buyer’s SC or the CAISO to the Facility, directing the Facility to discharge Facility Energy at a specific MW rate for a specified period of time or to an amount of MWh.

“Disclosing Party” has the meaning set forth in Section 18.2.

“Dispatch Notice” means any Charging Notice, Discharging Notice and any subsequent updates thereto, given by the CAISO, Buyer or Buyer’s SC, to Seller, directing the Facility to charge or discharge Facility Energy at a specific MWh rate to a specified Stored Energy Level; provided, any such operating instruction or updates shall be in accordance with the Operating Restrictions. Dispatch Notices may be communicated electronically (i.e. through ADS, AGC or e-mail), or telephonically, in accordance with the procedures set forth in Section 4.7. Telephonic or other verbal communications shall be documented (either recorded by tape, electronically or in writing) and such recordings shall be made available to both Buyer and Seller upon request for settlement purposes.

“Early Termination Date” has the meaning set forth in Section 11.2(a).

“Effective Capacity” means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW at the Delivery Point (i.e., measured at the Facility Meter as such meter readings are adjusted for any applicable Electrical Losses to the Delivery Point pursuant to the CAISO Tariff) as determined pursuant to the most recent Capacity Test (including the Commercial Operation Capacity Test), and as evidenced by a certificate substantially in the form attached as Exhibit I hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Capacity (with respect to a Commercial Operation Capacity Test) or (ii) the Installed Capacity (with respect to any other Capacity Test).

“Effective Date” has the meaning set forth on the Preamble.

“Effective Flexible Capacity” or “EFC” means the effective flexible capacity (in MWs) of the Facility pursuant to the counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff, which such flexible capacity may be used to satisfy Flexible RAR.
“**Efficiency Rate**” means the rate calculated as the quotient of (a) the sum of (i) Energy Out plus (ii) Idle Period Auxiliary Use for which Seller is required to reimburse Buyer, divided by (b) Energy In, pursuant to Exhibit O.

“**Efficiency Rate Factor**” has the meaning set forth in Exhibit C.

“**Electrical Losses**” means all transmission or transformation losses (a) between the Delivery Point and the Facility associated with delivery of Charging Energy, (b) between the Facility and the Delivery Point associated with delivery of Facility Energy, and includes losses due to inverter and/or the power conversion system load, including during idle periods.

“**Emission Reduction Credits**” or “**ERCs**” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby a district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

“**Energy**” means AC electrical energy, measured in kilowatt-hours, megawatt-hours, or multiple units thereof.

“**Energy In**” has the meaning set forth in Exhibit O.

“**Energy Management System**” or “**EMS**” means the Facility’s energy management system.

“**Energy Out**” has the meaning set forth in Exhibit O.

“**Environmental Costs**” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Facility, and the Facility’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Facility, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the Site, and the decontamination or remediation, on or off the Site, necessitated by the introduction of such hazardous substances on the Site.

“**Event of Default**” has the meaning set forth in Section 11.1.

“**Expected Commercial Operation Date**” has the meaning set forth on the Cover Sheet.

“**Expected Construction Start Date**” has the meaning set forth on the Cover Sheet.

“**Facility**” means the energy storage facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment.
required to deliver Product (but excluding any Shared Facilities), as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

“Facility Energy” means the Energy delivered from the Facility to the Delivery Point during any Settlement Interval or Settlement Period, as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted for any applicable Electrical Losses and Station Use pursuant to the CAISO Tariff. All Facility Energy shall have originally been delivered to the Facility as Charging Energy.

“Facility Meter” means a CAISO-approved bi-directional revenue quality meter or meters (with a 0.3 accuracy class), CAISO-approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Facility Metering Point and the amount of Facility Energy delivered to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. The Facility may contain multiple measurement devices that will make up the Facility Meter, and, unless otherwise indicated, references to the Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“FERC” means the Federal Energy Regulatory Commission or any successor government agency.

“Financial Close” means Seller and/or one of its Affiliates has obtained debt and/or equity financing commitments from one or more Lenders sufficient to construct the Facility, including such financing commitments from Seller’s owner(s).

“Flexible Capacity” means, with respect to any particular Showing Month, the number of MWs of Product which are eligible to satisfy Flexible RAR.

“Flexible RAR” means the flexible capacity requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

“Force Majeure Event” has the meaning set forth in Section 10.1.

“Force Majeure Unavailability” has the meaning set forth in Exhibit C.

“Full Capacity Deliverability Status” or “FCDS” has the meaning set forth in the CAISO Tariff.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant
markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Capacity Attributes.

“**GHG Regulations**” means Title 17, Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 10 (Climate Change), Article 5 (Emissions Cap), Sections 95800 to 96023 of the California Code of Regulations, as amended or supplemented from time to time.

“**Governmental Authority**” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided*, “Governmental Authority” shall not in any event include any Party.

“**Greenhouse Gas**” or “**GHG**” has the meaning set forth in the GHG Regulations or in any other applicable Laws.

“**Guaranteed Capacity**” means the maximum dependable operating capability of the Facility to discharge Energy, as measured in MW at the Delivery Point, for four (4) hours of continuous discharge, that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

“**Guaranteed Capacity Availability**” has the meaning set forth in Section 4.3.

“**Guaranteed Commercial Operation Date**” has the meaning on the Cover Sheet, as such date may be extended pursuant to Exhibit B.

“**Guaranteed Construction Start Date**” has the meaning on the Cover Sheet, as such date may be extended pursuant to Exhibit B.

“**Guaranteed Efficiency Rate**” means, for each Contract Year, the minimum guaranteed Efficiency Rate of the Facility for such Contract Year, as set forth on the Cover Sheet.

“**Idle Period Auxiliary Use**” means Auxiliary Use consumed by the Facility during periods in which the Facility is not charging or discharging pursuant to a Charging Notice or Discharging Notice for which Seller does not pay retail rates to its retail electric utility provider.

“**Imbalance Energy**” means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Facility Energy or Charging Energy deviates from the amount of Scheduled Energy.

“**Indemnified Party**” has the meaning set forth in Section 16.1(a).

“**Indemnifying Party**” has the meaning set forth in Section 16.1(a).

“**Initial Synchronization**” means the commencement of Trial Operations (as defined in the CAISO Tariff).
“Installed Capacity” means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW at the Facility Meter Point by the Facility Meter as such meter readings are adjusted for any applicable Electrical Losses to the Delivery Point pursuant to the CAISO Tariff, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B.

“Inter-SC Trade” has the meaning set forth in the CAISO Tariff.

“Interconnection Agreement” means the interconnection agreement entered into by Seller or an Affiliate pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

“Interconnection Capacity Limit” means an instantaneous amount of Energy that is permitted to be delivered from the Facility to the Delivery Point under Seller’s Interconnection Agreement, in the amount of 40 MW.

“Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

“Interest Rate” has the meaning set forth in Section 8.2.

“Interim Deliverability Status” has the meaning set forth in the CAISO Tariff.

“IP Indemnity Claim” has the meaning set forth in Section 16.1(a).

“ITC” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.


“Joint Powers Agreement” means that certain Joint Powers Agreement dated June 27, 2017, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“kWh” means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“Law” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“Lender” means, collectively, any Person (a) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or
operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (b) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (c) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K.

“Licensed Professional Engineer” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

“Local Capacity Area Resource” has the meaning set forth in the CAISO Tariff.

“Local RAR” means the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority. “Local RAR” may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Capacity Attributes.

“Marketable Emission Trading Credits” means emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (42 U.S.C. § 7651b (a) to (f)).

“Material Permits” means all permits required for Seller to commence construction, as set forth on Exhibit V.
“Milestones” means the significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

“Monthly Bridge Capacity Payment” has the meaning set forth in Section 3.4(e)(v).

“Monthly Capacity Payment” means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for the Product, as calculated in accordance with Exhibit C.

“Monthly Forecast” has the meaning set forth in Section 4.10(a).

“Moody’s” means Moody’s Investors Service, Inc., or its successor.

“MTR Requirements” has the meaning set forth in the Recitals.

“MW” means megawatts in alternating current, unless expressly stated in terms of direct current.

“MWh” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“NERC” means the North American Electric Reliability Corporation or any successor entity.

“Net Qualifying Capacity” has the meaning set forth in the CAISO Tariff.

“Network Upgrades” has the meaning set forth in the CAISO Tariff.

“Non-Defaulting Party” has the meaning set forth in Section 11.2.

“Notice” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).

“Operating Restrictions” means those restrictions, rules, requirements, and procedures set forth in Exhibit Q.

“Outage Schedule” has the meaning set forth in Section 4.11(a)(i).

“Party” has the meaning set forth in the Preamble.

“Performance Guarantees” has the meaning set forth in Section 4.3(b).

“Performance Security” means (i) cash or (ii) a Letter of Credit, in the amount specified for the Performance Security set forth on the Cover Sheet.
“**Permitted Transferee**” means (i) any Affiliate of Seller or (ii) any entity that satisfies, or is controlled by another Person that satisfies, the following requirements:

(a) A tangible net worth of not less than one hundred fifty million dollars ($150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and

(b) Either (i) has at least two (2) years of experience in the ownership and operations of energy storage facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility, or (ii) has confirmed in writing to Buyer that an Affiliate of Terra-Gen, LLC will continue to operate the Facility following the Change of Control involving such Permitted Transferee.

“**Person**” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“**Planned Outage**” means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.11(a).

“**PMAX**” means the applicable CAISO-certified maximum operating level of the Facility.

“**PMIN**” means the applicable CAISO-certified minimum operating level of the Facility.

“**PNode**” has the meaning set forth in the CAISO Tariff.

“**Portfolio**” means the single portfolio of electrical energy generating, energy storage, or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

“**Portfolio Financing**” means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

“**Portfolio Financing Entity**” means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

“**Product**” has the meaning set forth on the Cover Sheet.

“**Progress Report**” means a progress report including the items set forth in Exhibit E.

“**Project**” has the meaning set forth in Section 3.4(e).

“**Project Portfolio**” has the meaning set forth in Section 3.4(e).
“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric industry during the relevant time period with respect to grid-interconnected, utility-scale energy storage facilities in the Western United States, and (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale energy storage facilities in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable safety and reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“Qualifying Capacity” has the meaning set forth in the CAISO Tariff.

“RA Compliance Showing” means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, an entity is required to make to the CAISO pursuant to the CAISO Tariff, to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to any Governmental Authority.

“RA Deficiency Amount” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.5(b).

“RA Guarantee Date” means the Commercial Operation Date; provided, if the Bridge Capacity Delivery Period is extended to include the Showing Months of January 2025 and (if applicable) February 2025 as set forth in Section 2.2(f), then the RA Guarantee Date will be the first day of the first Showing Month after the end of the Bridge Capacity Delivery Period.

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.5(b), any Showing Month, commencing with the Showing Month that includes the RA Guarantee Date, during which the Net Qualifying Capacity of the Facility for such Showing Month plus any Replacement RA (if applicable) that was included in a Supply Plan for the Showing Month for Buyer was less than the Qualifying Capacity of the Facility for such month (including any month during the period between the RA Guarantee Date and the first day of the first Showing Month for which the Facility has a non-zero Net Qualifying Capacity, if applicable).

“Real-Time Market” has the meaning set forth in the CAISO Tariff.

“Receiving Party” has the meaning set forth in Section 18.2.

“Reliability Network Upgrades” has the meaning set forth in the CAISO Tariff.

“Remedial Action Plan” has the meaning set forth in Section 2.4.
“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and located within SP 15 TAC Area and, to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, described as a Local Capacity Area Resource.

“Requested Confidential Information” has the meaning set forth in Section 18.2.

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings, and shall include Flexible Capacity, and any local, zonal or otherwise locational attributes associated with the Facility.

“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements applicable to an entity as established by the CAISO pursuant to the CAISO Tariff, by the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

“Resource Adequacy Resource” shall have the meaning used in Resource Adequacy Rulings.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

“SCADA Systems” means the supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO or similar instructions from Buyer’s SC.

“Schedule” has the meaning set forth in the CAISO Tariff, and “Scheduled” and “Scheduling” have a corollary meaning.

“Scheduled Energy” means the Charging Energy or Facility Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), and/or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

“Scheduling Coordinator” or “SC” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the
functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time to time.

“Security Interest” has the meaning set forth in Section 8.9.

“Seller” has the meaning set forth on the Cover Sheet.

“Seller Initiated Test” has the meaning set forth in Section 4.4(c).

“Settlement Amount” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars ($0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“Settlement Interval” has the meaning set forth in the CAISO Tariff.

“Settlement Period” has the meaning set forth in the CAISO Tariff.

“Shared Facilities” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

“Showing Month” shall be the calendar month of the Delivery Term that is the subject of the RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly RA Compliance Showing made in June is for the Showing Month of August.

“Site” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer; provided, any such update to the Site that includes real property that was not originally contained within the Site boundaries described in Exhibit A shall be subject to Buyer’s approval of such updates in its sole discretion.

“Site Control” means that, for the Contract Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

“SOC” or “State of Charge” means (a) the Stored Energy Level relative to (b) the Effective Capacity multiplied by four (4) hours, expressed as a percentage.

“SP-15” means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.
“**Station Use**” means, in addition to all Auxiliary Use, the Energy (including Energy produced or discharged by the Facility) that is used within the Facility to power the lights, motors, temperature control systems, control systems and other electrical loads that are necessary for operation of the Facility (other than Auxiliary Use).

“**Storage Rate**” has the meaning set forth on the Cover Sheet.

“**Stored Energy Level**” means, at a particular time, the amount of electric Energy in the Facility available to be discharged as Facility Energy, expressed in MWh.

“**Supplementary Capacity Test Protocol**” has the meaning set forth in Exhibit O.

“**Supply Chain Code**” has the meaning in Exhibit U.

“**System Emergency**” means any condition that requires, as determined and declared by CAISO or the Transmission Provider, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

“**Tax**” or “**Taxes**” means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“**Tax Credits**” means the ITC and any state, local and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit specific to the production of clean or renewable energy and/or investments in clean or renewable energy facilities or battery storage facilities.

“**Terminated Transaction**” has the meaning set forth in Section 11.2(a).

“**Termination Payment**” has the meaning set forth in Section 11.3.

“**Total YTD Calculation Intervals**” has the meaning set forth in Exhibit P.

“**Transmission Provider**” means any entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities for the purpose of transmitting or transporting the Facility Energy from the Delivery Point.

“**Transmission System**” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.
“Transmission System Outage” means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller’s actions or inactions and that prevents Buyer or the CAISO (as applicable) from receiving Facility Energy onto the Transmission System.

“Ultimate Parent” means Terra-Gen, LLC, a Delaware limited liability company.

“Unavailable Calculation Interval” has the meaning set forth in Exhibit P.

“Unplanned Outage” means a period during which the Facility is unavailable to provide some or all of the Product due to the need to maintain or repair a component thereof, which period is not a Planned Outage.

1.2 Rules of Interpretation. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person’s successors and permitted assigns;

(g) the terms “include” and “including” mean “include or including (as applicable) without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;
(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression “and/or” when used as a conjunction shall connote “any or all of”;

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 **Contract Term.**

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein (“**Contract Term**”); provided, Buyer’s obligations to pay for or accept any Product are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

2.2 **Conditions Precedent.** The Delivery Term shall not commence until Seller completes to Buyer’s reasonable satisfaction each of the following conditions, which Buyer shall, if submitted by Seller within five (5) Business Days of the expected Commercial Operation Date, review and either accept or provide Notice stating in reasonably detail the basis for Buyer’s rejection thereof within five (5) Business Days of receipt thereof, and the Delivery Term shall commence as of the date that such conditions were satisfied, even if Buyer’s Notice accepting such satisfaction is delivered after such date:
(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller and the Transmission Provider shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits for the operation of the Facility have been obtained and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect;

(e) Seller has obtained CAISO Certification for the Facility;

(f) The Facility is providing Resource Adequacy Benefits for the month in which Delivery Term commences; provided, if Seller achieves CAISO Commercial Operation in the period between November 1, 2024 and December 31, 2024, inclusive, then this Section 2.2(f) shall not be applicable if Seller otherwise satisfies all conditions in this Section 2.2 and provides Notice of the Commercial Operation Date occurring during the period between January 1, 2025 and February 28, 2025, but Seller shall provide Bridge Capacity for the months of January and (if the Facility is not providing Resource Adequacy Benefits for February) February;

(g) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8;

(h) Seller has taken all actions and executed all documents and instruments, required to authorize Buyer (or its designated agent) to act as Scheduling Coordinator under this Agreement and to fully enable the Facility to be Scheduled by Buyer, and Buyer (or its designated agent) is authorized to act as Scheduling Coordinator (unless Buyer (or its designated agent) is not authorized to act as Scheduling Coordinator or the Facility is not fully enabled to be Scheduled by Buyer due to any act or omission of Buyer (or its designated agent));

(i) Seller has delivered to Buyer an officer’s certificate stating that Seller has used commercially reasonable efforts to comply with the Supply Chain Code and the requirements of Section 2.3(c); and

(j) Seller has paid Buyer for all amounts owing under this Agreement as of the Commercial Operation Date, if any, including Delay Damages.
2.3 **Development; Construction; Progress Reports.**

(a) Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller’s construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

(b) Seller shall promptly provide information and documentation reasonably requested by Buyer that is available to Seller and not already separately available to Buyer and which Buyer reasonably deems necessary or advisable to satisfy any CPUC requests or requirements in connection with the MTR Requirements, including (i) evidence of Site Control, (ii) a copy of Seller’s final notice to proceed authorizing its EPC contractor to commence construction of the Facility at the Site, and (iii) similar information related to the Bridge Capacity.

(c) Seller shall use commercially reasonable efforts to comply with the Supply Chain Code with respect to all materials, products, components, and labor used in constructing, installing and operating the Facility throughout the Term. Seller shall use commercially reasonable efforts to include in its contracts with contractors and suppliers for the Facility (other than contracts executed prior to the Effective Date, except with respect to any purchase or supply agreement for the battery energy storage system) provisions requiring such contractors and suppliers to use commercially reasonable efforts to comply with the Supply Chain Code. Seller shall use commercially reasonable efforts to implement due diligence procedures for its and its Affiliate’s suppliers, subcontractors and other participants in its supply chains. If (i) the purchase or supply agreement(s) for the battery energy storage systems included in the Facility includes terms that are substantially similar to the terms set forth in Exhibit X and (ii) Seller uses commercially reasonable efforts to enforce such terms, then Seller will be deemed to have complied with its obligations under this Section 2.3(c) with respect to such battery energy storage systems. Seller shall notify Buyer as soon as it becomes aware of any breach of its obligations under this Section 2.3(c).

(d) Buyer shall have the right, at Buyer’s sole expense, to retain an independent auditor to audit Seller’s compliance with the requirements of Section 2.3(c).

2.4 **Remedial Action Plan.** If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the Milestone completion date, a remedial action plan (“Remedial Action Plan”), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller’s detailed description of its proposed course of action to achieve the missed Milestones and all subsequent
Milestones by the Guaranteed Commercial Operation Date; provided, delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

2.5 Pre-Commercial Operation Actions. The Parties agree that, in order for Buyer to dispatch the Facility for its Commercial Operation Date, the Parties will have to perform certain of their Delivery Term obligations in advance of the Commercial Operation Date, including, without limitation, Seller’s delivery of an Availability Notice for the Commercial Operation Date, and delivery of a Dispatch Notice and nominating and scheduling the Facility for the Commercial Operation Date, in advance of the Commercial Operation Date. The Parties shall cooperate with each other in order for Buyer to be able to dispatch the Facility for the Commercial Operation Date. Seller shall give Buyer at least forty-five (45) days’ Notice before the Commercial Operation Date.

ARTICLE 3
PURCHASE AND SALE

3.1 Product. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer shall have the exclusive right to the Installed Capacity and Effective Capacity, as applicable, and all Product associated therewith, including the exclusive right to use, market or sell the Product and the right to all revenues generated from the use, resale or remarketing of the Product. Seller shall operate the Facility and make available, charge and discharge, deliver, and sell the Product therefrom to Buyer, when and as the Facility is available, subject to the terms and conditions of this Agreement, including the Operating Restrictions. Seller represents and warrants that it will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances. Seller shall not substitute or purchase any energy storage capacity, Energy, Ancillary Services or Capacity Attributes from any other energy storage resource or the market for delivery hereunder except as otherwise provided herein, nor shall Seller sell, assign or otherwise transfer any Product, or any portion thereof, to any third party other than to Buyer or CAISO pursuant to this Agreement or as otherwise required by Law.

3.2 Facility Energy. Except for Facility Energy resulting from a Seller Initiated Test, Seller commits to make available the Facility Energy to Buyer, and Buyer shall have the exclusive rights to all Facility Energy, subject to the Operating Restrictions. Title to and risk of loss related to the Facility Energy shall pass and transfer from Seller to Buyer at the Delivery Point.

3.3 Ancillary Services. Buyer shall have the exclusive rights to all Ancillary Services, with characteristics and quantities determined in accordance with the CAISO Tariff. Notwithstanding anything to the contrary herein, Seller is permitted to provide voltage support to the Transmission Provider in accordance with the Interconnection Agreement. Upon a request by Buyer, the Parties shall negotiate in good faith to modify the terms of this Agreement for the
Facility to be able to provide Black Start (as defined in the CAISO Tariff) or any other Ancillary Services not listed Exhibit Q.

3.4 Capacity Attributes. Seller shall diligently pursue Full Capacity Deliverability Status for the Guaranteed Capacity in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility. As of the Effective Date, Seller anticipates that the Facility will be qualified by the CAISO to provide to Buyer the amount and category of Flexible Capacity identified as the Anticipated Flexible Capacity on the Cover Sheet, but the Parties acknowledge and agree that the actual amount and category of Flexible Capacity available from the Facility may change over time and Seller does not guarantee the Facility will provide any particular amount or category of Flexible Capacity.

(b) Throughout the Delivery Term and subject to Section 3.6, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits, including Flexible Capacity, to Buyer. Throughout the Delivery Term, and subject to Section 3.6, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) For the duration of the Delivery Term, and subject to Section 3.6, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

(d) If Seller anticipates that it will have any RA Deficiency Amounts in a Showing Month, Seller may provide Replacement RA up to the amount of (X) the Qualifying Capacity of the Facility with respect to such Showing Month, minus (Y) the expected Net Qualifying Capacity of the Facility with respect to such Showing Month, provided that (a) the amount of Replacement RA in any Contract Year shall not to exceed twenty-five percent (25%) of the annual total amount of Resource Adequacy Benefits expected to be provided by the Facility, and (b) any intended Replacement RA is communicated by Seller to Buyer in a Notice substantially in the form of Exhibit M at least fifty (50) Business Days before the applicable Showing Month for the purpose of including in Buyer’s RA Compliance Showing for such Showing Month.

(e) In addition to the Parties’ rights and obligations hereunder with respect to the Product, Seller shall sell and deliver, and Buyer shall purchase and receive, “system” Resource Adequacy Benefits (“Bridge Capacity”) from one or more Resource Adequacy Resources other than the Facility (each, a “Project” and, collectively, the “Project Portfolio”) in accordance with the following terms and conditions:

(i) For each Showing Month in the time period commencing with the Showing Month of June 2024 through and including the Showing Month of December 2024 (the “Bridge Capacity Delivery Period”), Seller will sell and deliver to Buyer, and Buyer will
purchase and receive from Seller, the Bridge Capacity from the Project Portfolio in an amount equal to forty (40) MW “system” Resource Adequacy Benefits for such Showing Month (the “Bridge Capacity Contract Quantity”). The Bridge Capacity Delivery Period may be extended to include the Showing Months of January 2025 and (if applicable) February 2025 as set forth in Section 2.2(f).

(ii) During the Bridge Capacity Delivery Period, Seller or a qualified third party shall provide Scheduling Coordinator services for the Project Portfolio to deliver the Bridge Capacity. Seller will deliver the Bridge Capacity by submitting, or causing the applicable Project’s Scheduling Coordinator to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the CAISO Tariff and CPUC requirements to identify and confirm the Bridge Capacity delivered to Buyer for each Showing Month of the Bridge Capacity Delivery Period. The total amount of Bridge Capacity identified on the Supply Plan and confirmed by the CAISO for such Showing Month will equal the Bridge Capacity Contract Quantity.

(iii) Seller will provide Buyer Notice identifying the Project(s) and corresponding volume of Bridge Capacity provided by each Project for a Showing Month in the Bridge Capacity Delivery Period no less than sixty (60) days prior to the relevant Showing Month.

(iv) If the aggregate Bridge Capacity delivered by Seller for a Showing Month of the Bridge Capacity Delivery Period is less than the Bridge Capacity Contract Quantity for such Showing Month, then Seller will pay Buyer liquidated damages in an amount equal to the product of (A) the positive difference, if any, of the Bridge Capacity Contract Quantity for such Showing Month, minus the aggregate Bridge Capacity delivered by Seller for such Showing Month, multiplied by (B) the difference of (I) the product of (x) CPM Price for such Showing Month, times (y) the CPM Adjustment Factor, minus (II) the Bridge Capacity Price. Receipt of such liquidated damages is Buyer’s sole and exclusive remedy for any failure by Seller to deliver Bridge Capacity in the amount of the Bridge Capacity Contract Quantity.

(v) Buyer will pay Seller (the “Bridge Capacity Price”) for all Bridge Capacity delivered by Seller during the Bridge Capacity Delivery Period: [Redacted]. Buyer shall make a Monthly Bridge Capacity Payment to Seller for each Showing Month of the Bridge Capacity Delivery Period, where “Monthly Bridge Capacity Payment” for each such Showing Month is equal to the product of (A) the Bridge Capacity Price, and (B) the Bridge Capacity Contract Quantity for the Showing Month, rounded to the nearest penny (i.e., two decimal places); provided, the Bridge Capacity Contract Quantity in clause (B) of the Monthly Bridge Capacity Payment formula shall be reduced by the portion, if any, of Bridge Capacity Contract Quantity for the Showing Month that was not delivered in accordance with Section 3.4(e)(ii) for such Showing Month. Invoicing and payment for Bridge Capacity shall be in accordance with Article 8.

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3.5 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages and/or provide Replacement RA, as set forth in Section 3.5(b), as the sole and exclusive remedy for the Capacity Attributes that Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month, the “RA Deficiency Amount” shall be equal to the product of (i) the difference, expressed in kW, of (A) the Qualifying Capacity of the Facility (or, if Seller has not obtained certification from the CAISO of the Facility’s Qualifying Capacity, the amount of Qualifying Capacity the Facility would reasonably be estimated to qualify for, based on the CPUC-adopted qualifying capacity methodologies then in effect) for such RA Shortfall Month, minus (B) (I) the Net Qualifying Capacity of the Facility for such RA Shortfall Month, plus (II) any Replacement RA that was included in the Showing Month for Buyer (or, if Seller does not have a Net Qualifying Capacity for the Facility and did not provide any Replacement RA that was shown in a Showing Month for Buyer (other than due to Buyer’s action or inaction), the Net Qualifying Capacity shall be deemed to be zero (0) MW), multiplied by (ii) the product of (X) the CPM Soft Offer Cap (or its successor) for such RA Shortfall Month, multiplied by (Y) the CPM Adjustment Factor for such RA Shortfall Month (“CPM Price”).

3.6 **Compliance Expenditure Cap.** If a change in Law occurring after the Effective Date has increased Seller’s cost to comply with Seller’s obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of Capacity Attributes, then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Contract Term to comply with all of such obligations shall be capped at Twenty-Five Thousand Dollars ($25,000) per MW of Guaranteed Capacity (“Compliance Expenditure Cap”).

(a) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the “Compliance Actions.”

(b) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “Accepted Compliance Costs”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.6(c) within sixty (60) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, such Compliance Actions until such time as Buyer agrees to pay such Accepted
Compliance Costs.

(d) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

3.7 Facility Configuration. In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller shall discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; provided, neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties as set forth in a written agreement.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 Delivery. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including any operation and maintenance charges imposed on Seller by the Transmission Provider directly relating to the Facility’s operations. Buyer shall be responsible for all costs, charges and penalties (except as otherwise set forth in this Agreement), if any, imposed in connection with (a) the delivery of Charging Energy to the Delivery Point (including the cost of Charging Energy itself) and (b) the acceptance and transmission of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses with regard to (a) and (b). The Facility Energy will be scheduled with the CAISO by Buyer (or Buyer’s designated Scheduling Coordinator) in accordance with Exhibit D.

4.2 Station Use. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (i) during charging and discharging of the Facility pursuant to a Charging Notice or Discharging Notice, Auxiliary Use may be served by Charging Energy or Facility Energy, (ii) Seller is responsible for providing or obtaining all Energy to serve Station Use (including paying the cost of any Energy from the local utility to serve Station Use) except for Auxiliary Use during periods of charging or discharging pursuant to a Charging Notice or Discharging Notice, (iii) the supply of Auxiliary Use from the Facility shall not be deemed a violation of this Agreement, including Sections 4.9(c), (d), and (f), and (iv) Seller shall pay Buyer for all Idle Period Auxiliary Use in the manner contemplated by paragraph (a) of Exhibit C. Notwithstanding anything to the contrary in this Agreement, Seller may use the Facility to self-supply Auxiliary Use; provided, if any Energy provided by Buyer (i.e. originally delivered as Charging Energy) is used by Seller for Station Use (including Idle Period Auxiliary Use) and such use violates any CAISO rules, other applicable Laws or any applicable utility tariff, Seller (i) shall be solely responsible for (and shall reimburse Buyer, as applicable) any and all costs, penalties and
charges incurred by Buyer resulting therefrom and (ii) shall take such actions as may be necessary to comply with such CAISO rules, other applicable Laws or applicable utility tariff).

4.3 **Performance Guarantees; Ancillary Services.**

(a) During the Delivery Term, the Facility shall maintain an Annual Capacity Availability during each Contract Year of no less than ninety-eight percent (98%) (the “Guaranteed Capacity Availability”), which Annual Capacity Availability shall be calculated in accordance with Exhibit P.

(b) During the Delivery Term, the Facility shall maintain an Efficiency Rate of no less than Guaranteed Efficiency Rate. The Guaranteed Capacity Availability and Guaranteed Efficiency Rate are collectively the “**Performance Guarantees**”.

(c) Buyer’s remedies for Seller’s failure to achieve the Performance Guarantees are (i) the Monthly Capacity Payment adjustment and/or Capacity Availability Payment True-Up, as applicable, as set forth in Exhibit C, and (ii) in the case of a Seller Event of Default as set forth in Section 11.1(b)(iii) with respect to the Guaranteed Capacity Availability, the applicable remedies set forth in Article 11.

(d) Seller shall operate and maintain the Facility throughout the Delivery Term so as to be able to provide the Ancillary Services in accordance with the specifications set forth in the Facility’s CAISO Certification associated with the Effective Capacity. To the extent the Facility is unable or otherwise fails to provide Ancillary Services for any reason notexcused hereunder (which excuses include reasons occurring at the high-voltage side of the Delivery Point or beyond) during any Calculation Interval that is not otherwise deemed an Unavailable Calculation Interval (including by reason of failing an Ancillary Services certification test), then as exclusive remedies the Available Storage Capability for such Calculation Interval shall be deemed reduced for purposes of calculating the YTD Annual Capacity Availability to the extent of such inability or failure multiplied by

(e) Upon Buyer’s reasonable request, Seller shall submit the Facility for additional CAISO Certification so that the Facility may provide additional Ancillary Services that the Facility is, at the relevant time, actually physically capable of providing consistent with the definition of Ancillary Services herein, provided that Buyer has agreed to reimburse Seller for any material costs Seller incurs in connection with conducting such additional CAISO Certification.

4.4 **Facility Testing.**
(a) **Capacity Tests.** Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run additional Capacity Tests in accordance with Exhibit O.

(i) Buyer shall have the right to send one or more representative(s) to witness all Capacity Tests.

(ii) Following each Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate determined pursuant to a Capacity Test varies from the then-current Effective Capacity or Efficiency Rate, as applicable, then the actual capacity or efficiency rate, as applicable, determined pursuant to such Capacity Test shall become the new Effective Capacity and/or Efficiency Rate, as applicable, at the beginning of the day following the completion of the test for all purposes under this Agreement until a revised Effective Capacity and/or Efficiency Rate, as applicable, is determined pursuant to a subsequent Capacity Test.

(b) **Additional Testing.** Seller shall, at times and for durations reasonably agreed to by Buyer, conduct necessary testing to ensure the Facility is functioning properly and the Facility is able to respond to Dispatch Notices.

(c) **Buyer or Seller Initiated Tests.** Any testing of the Facility requested by Buyer after the Commercial Operation Capacity Tests and all required annual tests pursuant to Section B of Exhibit O shall be deemed Buyer-instructed dispatches of the Facility ("Buyer Dispatched Test"). Any test of the Facility that is not a Buyer Dispatched Test (including all tests conducted prior to Commercial Operation, any Commercial Operation Capacity Tests, any Capacity Test conducted if the Effective Capacity immediately prior to such Capacity Test is below seventy percent (70%) of the Installed Capacity, any test required by CAISO (including any test required to obtain or maintain CAISO Certification), and other Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating or maintaining the Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest)) shall be deemed a "Seller Initiated Test".

(i) For any Seller Initiated Test other than a Capacity Test required by Exhibit O for which there is a stated notice requirement, Seller shall notify Buyer no later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).

(ii) No Dispatch Notices shall be issued during any Seller Initiated Test or Buyer Dispatched Test except as reasonably requested by Seller or Buyer to implement the applicable test. Periods during which Buyer Dispatched Tests render the Facility (or any portion thereof, as applicable) unavailable shall be deemed periods during which the Facility is fully available for purposes of calculating the Annual Storage Capacity Availability. The Facility will be deemed unavailable during any Seller Initiated Test, unless such Seller Initiated Test is performed during a period in which Buyer has agreed in its sole discretion in writing that (A)
does not intend to dispatch the Facility and (B) it will deem the Facility available notwithstanding Seller is conducting such Seller Initiated Test during such period.

(d) If Buyer or Buyer’s SC receives notice from CAISO of a required test for any Ancillary Services, Buyer or Buyer’s SC must provide Seller telephonic Notice of such test and any related information provided by CAISO within two (2) minutes after receipt of such notice from CAISO and Seller may provide written confirmation to Buyer and Buyer’s SC of such telephonic Notice, and such written confirmation from Seller shall be deemed correct unless Buyer or Buyer’s SC disputes such written confirmation within two (2) Business Days of receipt thereof.

4.5 Testing Costs and Revenues.

(a) For all Buyer Dispatched Tests, Buyer shall be responsible for all Charging Energy and shall be entitled to all CAISO revenues associated with a Facility dispatch during a Buyer Dispatched Test. For all Seller Initiated Tests, (1) Seller shall reimburse Buyer the amount of Buyer’s payment of the Charging Energy for such Seller Initiated Test, and (2) Seller shall be entitled to all CAISO revenues associated with the discharge of such Energy. Buyer shall pay to Seller, in the month following Buyer’s receipt of such CAISO revenues and otherwise in accordance with Exhibit C, all applicable CAISO revenues received by Buyer or Buyer’s SC and associated with the discharge Energy associated with such Seller Initiated Test.

(b) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test.

(c) Except as set forth in Sections 4.5(a) and (b), all other costs of any testing of the Facility shall be borne by Seller.

4.6 Facility Operations.

(a) Seller shall operate the Facility in accordance with Prudent Operating Practices.

(b) Seller shall operate the Facility to automatically follow Automatic Generation Control such that the Facility can receive continuous instruction on a 4-second basis.

(c) Seller shall maintain a daily operations log for the Facility which shall include but not be limited to information on Energy charging and discharging, electricity consumption and efficiency (if applicable), availability, outages, changes in operating status, inspections and any other significant events related to the operation of the Facility. Information maintained pursuant to this Section 4.6(c) shall be provided to Buyer within fifteen (15) days of Buyer’s request.

(d) Seller shall maintain accurate records with respect to all Capacity Tests.

(e) Seller shall maintain and make available to Buyer records, including logbooks, demonstrating that the Facility is operated in accordance with Prudent Operating Practices. Seller shall comply with all reporting requirements and permit on-site audits, investigations, tests and inspections permitted or required under any Prudent Operating Practices.
4.7 **Dispatch Notices.** Buyer will have the right to dispatch the Facility seven days per week and 24 hours per day (including holidays), by causing Dispatch Notices to be issued, subject to Facility availability and the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Subject to Facility availability and the requirements and limitations set forth in this Agreement, including the Operating Restrictions, each Dispatch Notice will be effective unless and until such Dispatch Notice is modified by the CAISO, Buyer or Buyer’s SC. If an electronic submittal is not possible for reasons beyond Buyer’s control, Dispatch Notices may be provided (in order of preference) telephonically or by electronic mail to Seller’s personnel designated to receive such communications, as provided by Seller in writing. In addition to any other requirements set forth or referred to in this Agreement, all Dispatch Notices will be made in accordance with Market Notice Timelines as specified in the CAISO Tariff. If Buyer or Buyer’s SC provides any operational instruction telephonically to Seller, Seller may provide written confirmation of such instruction to Buyer and Buyer’s SC, and such written confirmation from Seller shall be deemed correct unless Buyer or Buyer’s SC disputes such written confirmation within two (2) Business Days of receipt thereof.

4.8 [Intentionally Omitted]

4.9 **Energy Management.**

(a) **Charging Generally.** Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to accept the Charging Energy from Buyer at the Delivery Point and to deliver the Charging Energy from the Delivery Point to the Facility in order to provide the Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller’s possession or control used to deliver the Charging Energy from the Delivery Point to the Facility. Except as otherwise expressly set forth in this Agreement, Buyer shall be responsible for paying all CAISO costs and charges associated with Charging Energy.

(b) **Charging Notices.** Buyer shall have the right to charge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Charging Notices to be issued, subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating Restrictions, each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer, Buyer’s SC or CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice.

(c) **No Unauthorized Charging.** Seller shall not charge the Facility during the Delivery Term other than pursuant to a valid Charging Notice (it being understood that Seller may adjust a Charging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Capacity Test), or pursuant to a notice from CAISO, the Transmission Provider, or any other Governmental Authority. If, during the Delivery Term, Seller charges the Facility (i) to a Stored Energy Level greater than the Stored Energy Level provided for in a Charging Notice, or (ii) in violation of the first sentence of this Section 4.9(c), then (x) Seller shall pay Buyer the cost of such Energy associated with such charging of the Facility, and (y) Buyer shall be entitled to discharge
such Energy and entitled to all of the CAISO revenues and other benefits (including Product) associated with such discharge.

(d) **No Unauthorized Discharging.** Seller shall not discharge the Facility during the Delivery Term other than pursuant to a valid Discharging Notice (it being understood that Seller may adjust a Discharging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Capacity Test), or pursuant to a notice from the Transmission Provider or Governmental Authority. Buyer shall have the right to discharge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Discharging Notices to be issued, subject to the requirements and limitations set forth in this Agreement. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer’s SC or the CAISO modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(e) **Unauthorized Charges and Discharges.** If Seller or any third party charges, discharges or otherwise uses the Facility other than as permitted hereunder, it shall be a breach by Seller and Seller shall hold Buyer harmless from, and indemnify Buyer against, all actual costs or losses associated therewith, and be responsible to Buyer for any damages arising therefrom, and, if Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then the failure to implement such procedures shall be an Event of Default under Article 11.

(f) **CAISO Dispatches.** During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer or Buyer’s SC, and Seller shall have no liability for violation of this Section 4.9 or any Charging Notices or Discharging Notice and the Facility will be deemed available for all purposes hereunder if and to the extent such violation is caused by Seller’s compliance with any CAISO Dispatch. During any time interval during the Delivery Term in which the Facility is capable of responding to a CAISO Dispatch, but the Facility deviates from a CAISO Dispatch, Seller shall be responsible for all CAISO charges and penalties (including Imbalance Energy charges) resulting from such deviation (in addition to, but without duplication of, any Buyer remedy related to overcharging of the Facility as set forth in Section 4.9(c)).

(g) **Pre-Commercial Operation Date Period, etc.** Prior to CAISO Commercial Operation, (i) Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, (ii) Seller or its designated SC shall be the Scheduling Coordinator for the Facility and Seller shall have exclusive rights to charge and discharge the Facility, (iii) Buyer and Buyer’s SC shall reasonably coordinate and cooperate with Seller with respect to Facility testing (including for Test Energy), and (iv) all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Facility testing shall be for Seller’s account. Upon CAISO Commercial Operation, Buyer or its designated SC shall be the Scheduling Coordinator for the Facility, and Buyer shall have exclusive rights to issue or cause to be issued Charging Notices or Discharging Notices and all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Facility operations shall be for Buyer’s account. For the period from CAISO Commercial Operation until the Commercial Operation Date, Buyer shall pay to Seller fifty percent (50%) of the Monthly Capacity Payment, pro-rated on a daily basis.
(h) Curtailments. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders applicable to such Settlement Interval shall have priority over any Dispatch Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.9 or any Dispatch Notice and the Facility will be deemed available for all purposes hereunder if and to the extent such violation is caused by Seller’s compliance with any Curtailment Order or other instruction or direction from a Governmental Authority or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Dispatch Notices during any Curtailment Order, subject to availability of the Facility and the requirements and limitations set forth in this Agreement, including the Operating Restrictions.

4.10 Capacity Availability Notice.

(a) No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected Available Capacity, and (ii) Available Storage Capability, for each day of the following month in a form substantially similar to Exhibits F-1 and F-2, as applicable (“Monthly Forecast”).

(b) During the Delivery Term, no later than two (2) Business Days before each schedule day for the Day-Ahead Market in accordance with WECC scheduling practices, Seller shall provide Buyer and the SC (if applicable) with an hourly schedule of the Available Capacity that the Facility is expected to have for each hour of such schedule day (including, in each case, as such availability may be adjusted as required by the CAISO Tariff for reporting to CAISO) (the “Availability Notice”). Seller shall provide Availability Notices (including updated Availability Notices) using the form attached in Exhibit G, or other form as reasonably requested by Buyer, by (in order of preference) electronic mail or telephonically to Buyer personnel or its Scheduling Coordinator designated to receive such communications.

(c) Seller shall notify Buyer and the SC (if applicable) as soon as practicable with an updated Monthly Forecast and Availability Notice, as applicable, if the Available Capacity of the Facility (including, in each case, as such availability may be adjusted as required by the CAISO Tariff for reporting to CAISO) changes or is expected to change after Buyer’s receipt of a Monthly Forecast or Availability Notice. Seller shall accommodate Buyer’s reasonable requests for changes in the time of delivery of Availability Notices.

4.11 Outages.

(a) Planned Outages.

(i) No later than January 15, April 15, July 15 and October 15 of each Contract Year, and at least sixty (60) days prior to the Guaranteed Commercial Operation Date, Seller shall submit to Buyer Seller’s schedule of proposed Planned Outages (“Outage Schedule”) for the following twelve (12)-month period in a form reasonably agreed to by Buyer. Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall give Notice to Seller of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Operating Practices, accommodate Buyer’s requests regarding the timing of any Planned
Outage. Seller may propose changes to any previously scheduled Planned Outage at least fifteen (15) days prior to such Planned Outage. Buyer shall review each such change and shall advise Seller within three (3) days of Buyer’s receipt thereof, in Buyer’s sole discretion but consistent with Prudent Operating Practices, whether such change is acceptable or Buyer may propose alternate dates for the requested scheduled maintenance. Seller shall cooperate with Buyer to arrange and coordinate all Planned Outages with the CAISO. Seller shall communicate to Buyer all changes to a Planned Outage and estimated time of return of the Facility as soon as practicable after the condition causing the change becomes known to Seller.

(ii) If reasonably required in accordance with Prudent Operating Practices, Seller may perform maintenance at a different time than maintenance scheduled pursuant to Section 4.11(a)(i). Seller shall provide Notice to Buyer within the time period determined by the CAISO for the Facility, as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an “Approved Maintenance Outage” under the CAISO Tariff (or such shorter period as may be reasonably acceptable to Buyer based on the likelihood of dispatch by Buyer), and Seller shall limit maintenance repairs performed pursuant to this Section 4.11(a)(ii) to periods when Buyer does not reasonably believe the Facility will be dispatched.

(b) **No Planned Outages During Summer Months.** Except as scheduled by the Parties under Section 4.11(a)(ii), no outages shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its sole discretion. In the event that Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

(c) **Notice of Unplanned Outages.** Seller shall notify Buyer by telephoning Buyer’s Scheduling Coordinator no later than ten (10) minutes following the occurrence of an Unplanned Outage, or if Seller has knowledge that an Unplanned Outage will occur, within twenty (20) minutes of determining that such Unplanned Outage will occur. Seller shall relay outage information to Buyer as required by the CAISO Tariff within twenty (20) minutes of the Unplanned Outage. Seller shall communicate to Buyer the estimated time of return of the Facility as soon as practical after Seller has knowledge thereof.

(d) **Inspection.** In the event of an Unplanned Outage, Buyer shall have the option to inspect the Facility and all records relating thereto on any Business Day and at a reasonable time and Seller shall reasonably cooperate with Buyer during any such inspection. Buyer shall comply with Seller’s safety and security rules and instructions during any inspection, and shall not interfere with work on or operation of the Facility.

(e) **Reports of Outages.** Seller shall promptly prepare and provide to Buyer, all reports of Unplanned Outages or Planned Outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with CAISO requirements or any applicable Laws.

ARTICLE 5
TAXES, GOVERNMENTAL AND ENVIRONMENTAL COSTS

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product
to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the Charging Energy and the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation to evidence such exemption or exclusion within thirty (30) days after the date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and from which Buyer claims it is exempt.

5.2 **Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided*, neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

5.3 **Environmental Costs.** Seller shall be solely responsible for the following, excluding, however, environmental related costs, taxes, charges, or fees of any type arising out of or related to Charging Energy or Facility Energy where such costs are assessed or arise at, or on the grid side of, the Delivery Point, all of which costs shall (as between Seller and Buyer) be the sole responsibility of Buyer:

(a) All Environmental Costs;

(b) All taxes, charges or fees imposed on the Facility or Seller by a Governmental Authority for Greenhouse Gas emitted by or attributable to the Facility during the Delivery Term;

(c) Seller’s obligations listed under “Compliance Obligation” in the GHG Regulations, and

(d) All other costs associated with the implementation and regulation of Greenhouse Gas emissions (whether in accordance with the California Global Warming Solutions Act of 2006, Assembly Bill 32 (2006) and the regulations promulgated thereunder, including the GHG Regulations, or any other federal, state or local legislation to offset or reduce any Greenhouse Gas emissions implemented and regulated by a Governmental Authority) with respect to the Facility and/or Seller.

**ARTICLE 6**

**MAINTENANCE AND REPAIR OF THE FACILITY**

6.1 **Maintenance of the Facility.**
(a) Seller shall, as between Seller and Buyer, be solely responsible for the operation and maintenance of the Facility and the delivery of the Product, and shall comply with applicable Law and Prudent Operating Practices relating to the operation and maintenance of the Facility. Seller shall maintain and deliver maintenance and repair records of the Facility to Buyer’s scheduling representative upon request.

(b) Seller shall promptly make all necessary repairs to the Facility, and any portion thereof, and take all actions necessary in order to provide the Product to Buyer in accordance with the terms of this Agreement (and, at a minimum, the Performance Guarantees).

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person’s property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer’s emergency contact identified in Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Facility Energy to the Delivery Point.

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller’s rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller’s Affiliates, and/or third parties pursuant to which certain Interconnection Facilities and the Interconnection Agreement may be subject to joint ownership and shared maintenance and operation arrangements; provided, such agreements shall (i) permit Seller to perform or satisfy, and shall not purport to limit, Seller’s obligations hereunder, (ii) provide for separate metering of the Facility, (iii) shall not reduce the interconnection capacity under the Interconnection Agreement available for the Facility’s priority use below the Interconnection Capacity Limit, (iv) provide that any other generating or energy storage facilities not included in the Facility but using Shared Facilities shall not be included within the Facility’s CAISO Resource ID, and (v) provide that in the event of any curtailment of output from generating or energy storage facilities using the Shared Facilities that is not specific to one or more CAISO Resource IDs, the Facility shall not be allocated more than its pro rata portion of the curtailment instruction based on its pro rata allocation of the Shared Facilities capacity prior to such curtailment or reduction. Seller shall not, and shall not permit any affiliate to, allocate to other parties a share of the total interconnection capacity under the Interconnection Agreements in excess of an amount equal to the total interconnection capacity under the Interconnection Agreements minus the Interconnection Capacity Limit.

**ARTICLE 7**

**METERING**

7.1 **Metering.**

(a) Seller shall measure the amount of Charging Energy and Facility Energy using the Facility Meter, which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses. Seller shall separately meter all Station Use and all Auxiliary Use. The Facility Meter will be
operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller’s cost. Each meter shall be kept under seal, such seals to be broken only when the Facility Meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all Facility Meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer shall cooperate, and Buyer shall cause its SC to cooperate, to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface-Settlements (MRI-S) web and/or directly from the CAISO meter(s) at the Facility.

(b) Section 7.1(a) is based on the Parties’ mutual understanding as of the Effective Date that (i) the CAISO requires the Facility Meter to be programmed for Electrical Losses as set forth in the definition of Electrical Losses in this Agreement and (ii) the automatic adjustments to Charging Notices and Discharging Notices as set forth in the definitions of Charging Notice and Discharging Notice in this Agreement will not result in Seller violating, or incurring any costs, penalties or charges under the CAISO Tariff. If any of the foregoing mutual understandings in (i) or (ii) between the Parties become incorrect during the Delivery Term, the Parties shall cooperate in good faith to make any amendments and modifications to the Facility and this Agreement as are reasonably necessary to conform this Agreement to the CAISO Tariff and avoid, to the maximum extent practicable, any CAISO charges, costs or penalties that may be imposed on either Party due to non-conformance with the CAISO Tariff, such agreement not to be unreasonably delayed, conditioned or withheld.

7.2 Meter Verification. Annually, if Seller has reason to believe there may be a Facility Meter malfunction, or upon Buyer’s reasonable request, Seller shall test the Facility Meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a Facility Meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the Facility Meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last Facility Meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period if such adjustments are accepted by CAISO; provided, such period may not exceed twelve (12) months.

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 Invoicing. Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for Product no later than the tenth (10th) day of each month for the previous calendar month. Each invoice shall (a) reflect records of metered data, including (i) CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Charging Energy, Station Use, Idle Period Auxiliary Use for which Seller owes reimbursement to Buyer, Facility Energy, and the amount of Bridge Capacity or Replacement RA delivered to Buyer (if any) and (ii) data showing a calculation of the Monthly Capacity Payment, Monthly Bridge Capacity Payment, and other relevant data for the prior month; and (b) be in a format reasonably specified
by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment.** Buyer shall make payment to Seller of Monthly Capacity Payments for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts by the later of (a) ten (10) Business Days after Buyer’s receipt of the invoice from Seller, and (b) the thirtieth (30th) day of the month after the operational month for which such invoice was rendered; *provided,* if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the “Interest Rate”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days’ Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller’s performance of this Agreement because the compensation under this Agreement exceeds $10,000.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer’s next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer’s next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment
to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and P, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller’s Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect until Buyer is required to return such Development Security hereunder. Upon the earlier of (a) Seller’s delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement.

8.8 **Seller’s Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest (“Security Interest”) in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7
and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer’s Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE 9
NOTICES

9.1 Addresses for the Delivery of Notices. Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth in Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 Acceptable Means of Delivering Notice. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5 pm, on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic
communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10
FORCE MAJEURE

10.1 Definition

(a) “Force Majeure Event” means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of commercially reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of claiming the Party; provided, a Force Majeure Event shall not excuse any such delay, nonperformance, or noncompliance to the extent the claiming Party’s fault or negligence contributed thereto in scope or duration.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornados, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or

landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “Force Majeure Event” does not include (i) economic conditions or changes in Law that render a Party’s performance of this Agreement at the Storage Rate unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability

by an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event;
or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

10.2 **No Liability If a Force Majeure Event Occurs.** Except as provided in Section 4 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 **Notice.** In order to claim a Force Majeure Event, the claiming Party, within fourteen (14) days after becoming aware of a reasonable likelihood of an impact on the Claiming Party’s performance hereunder following the initial occurrence of the claimed Force Majeure Event, must give the other Party Notice describing the particulars of the occurrence in substantially the form set forth in Exhibit W, (b) provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement, and (c) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party.

10.4 **Termination Following Force Majeure Event or Development Cure Period.**

(a) If the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) in Exhibit B) plus the payment of Commercial Operation Delay Damages equal or exceed two hundred seventy (270) days, and Seller has demonstrated to Buyer’s reasonable satisfaction that Seller’s failure to achieve COD by the Guaranteed Commercial Operation Date (as extended) was the result of delays that would have otherwise entitled to Seller to two hundred seventy (270) days of Development Cure Period delays but for the one hundred eighty (180)-day limitation, then Seller may terminate this Agreement upon Notice to Buyer. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security then held by Buyer plus the full amount of Commercial Operation Delay Damages paid by Seller, less any amounts drawn in accordance with this Agreement. If the cause of the delays that would have otherwise entitled to Seller to more than one hundred eighty (180) days of Development Cure Period delays but for the one hundred eighty (180)-day limitation ends prior to two-hundred seventy (270) days of delays and Seller has paid Commercial Operation Delay Damages for the number of days in excess of the one hundred eighty (180)-day limitation, then Buyer shall have the right, in its sole discretion, to either (i) extend the Guaranteed Commercial Operation Date beyond the date on which the cause of the Development Cure Period delays ends by the number of days of Commercial Operation Delay Damages paid by
Seller, or (ii) to terminate this Agreement without liability of either Party to the other and return to Seller any Development Security then held by Buyer plus the full amount of Commercial Operation Delay Damages paid by Seller, less any amounts drawn in accordance with this Agreement.

(b) If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

11.1 Events of Default. An “Event of Default” shall mean,

(a) with respect to a Party (the “Defaulting Party”) that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (A) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.5, (B) failure to provide Ancillary Services, the exclusive remedies for which are set forth in Section 4.3(d), Exhibit C, and Exhibit P, and (C) failures related to the Annual Capacity Availability that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Exhibit C and Exhibit P, and (D) failures related to the Efficiency Rate, the exclusive remedies for which are set forth in Exhibit C) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;
(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party;

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not discharged by the Facility;

(ii) the failure by Seller to (A) achieve Construction Start on or before the Guaranteed Construction Start Date, as such date may be extended by Seller’s payment of Daily Delay Damages pursuant to Section 1(b) of Exhibit B and/or the Bridge Capacity Delivery Period pursuant to Section 2 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B, or (B) achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller’s payment of Commercial Operation Delay Damages pursuant to Section 2 of Exhibit B and/or the Bridge Capacity Delivery Period pursuant to Section 2 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(iii) [Redacted]

Annual Capacity Availability multiplied by the Effective Capacity for the applicable period is not equal to at least seventy percent (70%) multiplied by the Installed Capacity, and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet such seventy percent (70%) multiplied by the Installed Capacity threshold, and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed three hundred sixty-five (365) days if cure requires replacement of the Facility’s step-up transformer or one hundred eighty (180) days if such transformer replacement is not required ("Cure Plan") and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein; provided, if, for any Contract Year, the Annual Capacity Availability multiplied by the Effective Capacity of the applicable period is less than seventy percent (70%) multiplied by the Installed Capacity solely due to a Force Majeure Event, then such occurrence shall be subject to Section 10.4(b) and shall not be an Event of Default under this Section 11.1(b)(iii);

(iv) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to
replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

(v) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody’s;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

11.2 Remedies; Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“Non-Defaulting Party”) shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“Early Termination Date”) that terminates this Agreement (the “Terminated Transaction”) and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment, or (ii) the Termination Payment, as applicable, in each case calculated in accordance with Section 11.3 below;

(c) to withhold any payments due to the Defaulting Party under this Agreement;
(d) to suspend performance; and

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 **Damage Payment: Termination Payment.** If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or Termination Payment, as applicable, in accordance with this Section 11.3.

(a) **Damage Payment Prior to Commercial Operation Date.** If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be a dollar amount that equals the amount of the Development Security plus, if the Development Security is posted as cash, any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon if the Development Security is posted as cash, and any amount of Development Security that Seller has not yet posted with Buyer shall be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer’s damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller’s Event of Default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer’s harm or loss.

(ii) If Buyer is the Defaulting Party, then the Damage Payment shall be owed to Seller and shall equal (A) the sum of (I) all actual, documented and verifiable costs and expenses, incurred or paid by Seller or its Affiliates, from the Effective Date through the Early Termination Date, directly in connection with the Facility (including in connection with acquisition, development, financing and construction thereof)
the fair market value (determined in a commercially reasonable manner by third-party independent evaluator mutually agreed by the Parties (or absent such agreement, by a third-party independent evaluator mutually agreed by two independent evaluators, one selected by each of the Parties), but at Buyer’s sole cost), net of all Facility-related liabilities and obligations (without duplication of any of the liabilities and obligations set forth in Section 11.3(a)(ii) (A)), of (I) all Seller’s assets if sold individually, or (II) the entire Facility, whichever is greater, regardless of whether or not any Seller asset or the entire Facility is actually sold or disposed of. Fair market value will be based on the value of Seller’s assets or the entire Facility as existing on the Early Termination Date and not on the value thereof at a later stage of development or construction of the Facility or at completion of the Facility. There will be no amount owed to Buyer. The Parties agree that Seller’s damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer’s default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller’s harm or loss.

(b) **Termination Payment On or After the Commercial Operation Date.** The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date ("**Termination Payment**") shall be the aggregate of all Settlement Amounts plus any and all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment or Damage Payment.** As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage
Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment or Damage Payment.** If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party’s calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.

11.6 **Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.** If the Agreement is terminated prior to the Commercial Operation Date for any reason except due to Buyer’s Event of Default, neither Seller nor Seller’s Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following such early termination date, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller’s Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price), and Buyer fails to accept such offer in writing within forty-five (45) days of Buyer’s receipt thereof. Neither Seller nor Seller’s Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including Seller’s interest in the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by Buyer.

Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7 **Rights And Remedies Are Cumulative.** Except where liquidated damages or other remedy are explicitly provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.
11.8 **Mitigation.** Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

**ARTICLE 12**

**LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.**

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN IP INDEMNITY CLAIM, (C) AN ARTICLE 16 INDEMNITY CLAIM, (D) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (E) RESULTING FROM A PARTY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 **Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER’S LIMITATION OF LIABILITY AND THE PARTIES’ WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO “FAIL OF THEIR ESSENTIAL PURPOSE” OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER’S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.4, 3.5, 11.2 AND 11.3, AND AS
PROVIDED IN EXHIBIT B, EXHIBIT C, AND EXHIBIT P THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 Seller’s Representations and Warranties. As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller’s performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its
terms, except as limited by laws of general applicability limiting the enforcement of creditors’ rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility is located in the State of California.

(f) Neither Seller nor its Affiliates has been notified by any existing or anticipated supplier or service provider, that the disease designated COVID-19 or the related virus designated SARS-CoV-2 have caused or are reasonably likely to cause a delay in the construction of the Facility or the delivery of materials necessary to complete the Facility, in each case that would cause the Construction Start Date to be later than the Guaranteed Construction Start Date or the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date.

13.2 **Buyer’s Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer’s performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors’ rights or by the exercise of judicial discretion in accordance with general principles of equity.
(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

(f) Buyer is a “local public entity” as defined in Section 900.4 of the Government Code of the State of California.

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Workforce Development.** The Parties acknowledge that in connection with Buyer’s energy procurement efforts, including entering into this Agreement, Buyer is committed to creating community benefits, which includes engaging a skilled and trained workforce and targeted hires. Accordingly, prior to the Guaranteed Construction Start Date, Seller shall ensure that work performed in connection with construction of the Facility will be conducted using a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or similar agreement providing for terms and conditions of employment with applicable labor organizations, and shall remain compliant with such agreement in accordance with the terms thereof.

**ARTICLE 14**

**ASSIGNMENT**

14.1 **General Prohibition on Assignments.** Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; provided, a Change of Control of Seller shall not require Buyer’s consent and will not be subject to Section 14.2 or Section 14.3 if the assignee or transferee is a Permitted Transferee. Any assignment made without the required written consent, or in violation of the conditions to
assignment set out below, shall be null and void. Seller shall be responsible for Buyer’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys’ fees.

14.2 Collateral Assignment. Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility, Buyer shall in good faith work with Seller and Lender to execute a consent to collateral assignment of this Agreement substantially in the form attached hereto as Exhibit S and with such changes as may be reasonably requested by Lender (“Consent to Collateral Assignment”).

14.3 Permitted Assignment by Seller. Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller or (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); if, and only if:

(a) the assignee is a Permitted Transferee;

(b) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and

(c) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller’s obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Buyer.

14.4 Shared Facilities; Portfolio Financing. Without limiting the foregoing, Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax equity or cash equity investment, and/or (2) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; provided, Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney’s fees incurred by Buyer in connection therewith shall be borne by Seller.

ARTICLE 15
DISPUTE RESOLUTION

15.1 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the
state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either forty-five (45) days of initiating such discussions, or within sixty (60) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15.3 **Attorneys’ Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, each Party shall bear its own respective costs, expenses and attorneys’ fees in connection with said action, [redacted].

15.4 **Venue.** In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Los Angeles County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, and waive any claim or defense that such forum is not convenient or proper.

**ARTICLE 16**

**INDEMNIFICATION**

16.1 **Indemnification.**

(a) Each Party (the “**Indemnifying Party**”) agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the “**Indemnified Party**”) from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents, (ii) for third-party claims resulting from the Indemnifying Party’s breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement, or (iii) any claims of infringement upon or violation of any trade secret, trademark, trade name, copyright, patent, or other intellectual property rights of any third party by equipment, software, applications or programs (or any portion of same) used by the Indemnifying Party or its suppliers, contractors, or subcontractors in connection with the Facility (an “**TP Indemnity Claim**”).

(b) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.
16.2 **Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party, *provided*, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party, then the Indemnified Party may employ counsel at its own expense with respect to any claims or demands asserted or sought to be collected against it; *provided further*, if counsel is employed due to a conflict of interest or because the Indemnifying Party does not assume control of the defense, the Indemnifying Party will bear the expense of this counsel, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim; *provided*, settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party’s counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party’s damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

**ARTICLE 17**

**INSURANCE**

17.1 **Insurance.**

(a) **General Liability.** Seller shall provide and maintain, at its sole expense, the following types and minimum limits of insurance with a carrier rated “A- VII” or higher by A.M. Best’s Key Rating Guide: (i) commercial general liability insurance, including products and completed operations, personal injury, and contractual liability insurance, in a minimum amount of One Million Dollars ($1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars ($2,000,000), and including Buyer as an additional insured to the extent of liabilities assumed under this Agreement; and (ii) an umbrella insurance policy in a minimum limit of liability of Ten Million Dollars ($10,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability per policy terms and conditions. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) **Employer’s Liability Insurance.** Employers’ Liability insurance shall not be less than One Million Dollars ($1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar ($1,000,000) policy limit will apply to each employee.

(c) **Workers Compensation Insurance.** Seller, if it has employees, shall also maintain at all times during the Contract Term workers’ compensation and employers’ liability insurance coverage in accordance with applicable requirements of Law.
(d) **Business Auto Insurance.** Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars ($1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller’s use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) **Construction All-Risk Insurance.** Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(f) **Property Damage Insurance.** Seller shall maintain or cause to be maintained during the Delivery Term, property damage insurance with a policy limit equal to the full replacement cost of the Facility or maximum foreseeable loss limit consistent with Prudent Industry Practices on a per occurrence basis. Sub-limits for natural catastrophe perils are acceptable as are sub-limits which are regularly applied per Prudent Industry Practices.

(g) **Pollution Liability Insurance.** Seller shall maintain or cause to be maintained during the Contract Term, pollution liability insurance in an amount not less than Two Million Dollars ($2,000,000) each occurrence covering losses involving hazardous material(s) and caused by pollution incidents or conditions that arise from any subcontractor’s performance or lack of performance of work under this Agreement, or might be required by federal, state, regional, municipal, and local laws, including coverage for bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death, property damage including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically damaged or destroyed, and defense costs. If such coverage is on a “claims made” policy form, any applicable “retroactive date” shall be no later than the Effective Date and shall be maintained for at least two (2) years beyond the termination of this Agreement, to allow for a reasonable extended reporting period. Such requirement may be satisfied under GL & Umbrella insurance.

(h) **Subcontractor Insurance.** Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars ($1,000,000); (ii) workers’ compensation insurance and employers’ liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars ($1,000,000) per occurrence and request additional insured status on a primary and non-contributory basis and waivers of subrogation. However, Seller may permit any such Subcontractor to obtain and maintain insurance coverages terms that are customary for subcontractors providing work of the type and scope to be provided and are consistent with Prudent Industry Practices.

(i) **Evidence of Insurance.** No later than (i) ten (10) days after the Effective Date with respect to the coverage described in this Section 17.1, except for the coverage described in clauses (e), (f), and (g), (ii) the Construction Start Date with respect to the coverage described in clauses (e), and (g) of this Section 17.1, and (iii) the Commercial Operation Date with respect to the coverage described in clause (f) of this Section 17.1, and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event
of any cancellation or termination of coverage. All insurance required herein shall be primary coverage without right of contribution from any insurance of Buyer, and such policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller and its employees and any subrogation rights which may pass to Seller’s insurance carriers for the payment of any claims. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

(j) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer’s remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

ARTICLE 18
CONFIDENTIAL INFORMATION

18.1 Definition of Confidential Information. The following constitutes “Confidential Information,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 Duty to Maintain Confidentiality. The Party receiving Confidential Information (the “Receiving Party”) from the other Party (the “Disclosing Party”) shall not disclose Confidential Information to a third party (other than the Party’s employees, lenders, investors, counsel, accountants, directors or advisors, or any such representatives of a Party’s Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; provided, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word “Confidential.” The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as “Confidential” that clearly contain information that is not Confidential Information.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“Requested Confidential Information”), Buyer shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer, its officers, employees and agents (“Buyer’s Indemnified Parties”), from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer’s Indemnified Parties for Buyer’s refusal to disclose any Requested Confidential Information.

18.3 Irreparable Injury; Remedies. Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 Further Permitted Disclosure. Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.

18.5 Press Releases. Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed
upon the contents of any such press release.

**ARTICLE 19**

**MISCELLANEOUS**

19.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

19.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; provided, this Agreement may not be amended by electronic mail communications.

19.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) and/or, to the extent set forth herein, any Lender and/or Indemnified Party.

19.5 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S.
Changes proposed by a non-Party or FERC acting \textit{sua sponte} shall be subject to the most stringent standard permissible under applicable Law.

19.7 \textbf{Counterparts.} This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.8 \textbf{Electronic Delivery.} This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party.

19.9 \textbf{Binding Effect.} This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10 \textbf{No Recourse to Members of Buyer.} Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the employees, directors, officers, consultants or advisors of Buyer or its constituent members, in connection with this Agreement.

19.11 \textbf{Forward Contract.} The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are “forward contract merchants” within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any Bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.12 \textbf{Change in Electric Market Design.} If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.
19.13 **Further Assurances.** Each of the Parties hereto agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

19.14 **Recordings.** Unless a Party expressly objects to a recording at the beginning of a telephone conversation, each Party consents to the creation of an electronic recording of all telephone conversations between the Parties to this Agreement related to the scheduling of any Product, and that any such recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement, subject to the confidentiality provisions of Article 18. Each Party waives any further notice of such monitoring or recording and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. Failure of a Party either to provide such notification or obtain such consent shall not in any way limit the use of the recordings pursuant to this Agreement.

[Signatures on following page]
IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

SAGEBRUSH ESS IIB, LLC
By: __________________________
Name: __________________________
Title: __________________________

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority
By: __________________________
Name: __________________________
Title: __________________________
EXHIBIT A

FACILITY DESCRIPTION

Site Name: Sagebrush II

Site includes all or some of the following APNs: 237-031-04 and 237-031-38

City: Mojave

County: Kern

Zip Code: 93501

Latitude and Longitude: 35° 2'31.78"N and 118°15'48.37"W

Facility Description: A 40 MWAC / 160 MWh battery energy storage facility located in Kern County, in the State of California, and subject to reduction in size as described in Exhibit B.

Delivery Point: Southern California Edison Company’s Vincent Substation

Facility Meter: See Exhibit R

P-node: The PNode designated by CAISO for the Facility at the Southern California Edison Company’s Vincent Substation

Transmission Provider: Southern California Edison Company

Exhibit A - 1

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EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility.**

   (a) **Construction Start** will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, engagement of all applicable contractors, and ordering of all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and Seller’s execution of an engineering, procurement, and construction contract and issuance thereunder of a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the **Construction Start Date.** Seller shall cause the Construction Start Date to occur no later than the Guaranteed Construction Start Date.

   (b) Seller may extend the Guaranteed Construction Start Date by paying Daily Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of one hundred twenty (120) days of extensions by such payment of Daily Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date Seller shall provide notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. This process shall apply to the original Guaranteed Construction Start Date extension period and any subsequent extensions via payment of Daily Delay Damages. If Seller achieves Construction Start prior to the Guaranteed Construction Start Date as extended by the payment of Daily Delay Damages, Buyer shall refund to Seller the Daily Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Daily Delay Damages, not to exceed the total amount of Daily Delay Damages paid by Seller pursuant to this Section 1(b) of Exhibit B. If Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period and/or the Bridge Capacity Delivery Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller, which amounts will be included in the first invoice delivered hereunder after the Commercial Operation Date.

2. **Commercial Operation of the Facility.** “Commercial Operation” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “COD Certificate”).

Exhibit B - 1
(a) Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve
Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

(b) Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of ninety (90) days of extensions by such payment of Commercial Operation Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. This process shall apply to the original Guaranteed Commercial Operation Date extension period and any subsequent extensions via payment of Commercial Operation Delay Damages. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(b) of Exhibit B.

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2. If the Facility has not achieved (a) the Construction Start Date by the date that is thirty (30) days after the Guaranteed Construction Start Date, or (b) the Commercial Operation Date by the date that is thirty (30) days after the Guaranteed Commercial Operation Date, and, in either case, Buyer has not already terminated this Agreement, Seller may elect to terminate this Agreement by providing notice of termination to Buyer. Upon any such termination of this Agreement by Seller pursuant to this Section 3 of Exhibit B, Seller will owe Buyer liquidated damages in an amount equal to the Damage Payment calculated pursuant to Section 11.3(a)(i) as if Seller were the Defaulting Party. Buyer’s receipt of the Damage Payment and the right of first offer pursuant to Section 11.6
will be Buyer’s sole and exclusive remedy in connection with Seller’s termination of the Agreement pursuant to this Section 3 of Exhibit B.

4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be extended on a day-for-day basis (the “Development Cure Period”) for the duration of any and all delays arising out of the following circumstances to the extent (i) the following circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines, and (ii) such delays could not be mitigated by Seller using commercially reasonable efforts to overcome the delays (provided, if any of the following circumstances occur concurrently, such guaranteed date(s) shall only be extended one (1) per concurrent day of delay):

(a) Seller has not acquired the Material Permits by the date that is thirty (30) days following the Expected Construction Start Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or

(b) a Force Majeure Event occurs; or

(c) the Interconnection Facilities or Reliability Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the date that is thirty (30) days prior to the Guaranteed Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or

(d) Buyer has not made all necessary arrangements to deliver Charging Energy at the Delivery Point and receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Seller shall submit any claim for Development Cure Period delays within (x) ten (10) Business Days of the applicable milestone in the case of (a), (c) or (d) above, and (y) fourteen (14) days after becoming aware of a reasonable likelihood of an impact on Seller’s performance hereunder following the initial occurrence of the claimed Force Majeure Event in the case of (b) above, in substantially the form set forth in Exhibit W. Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) above) shall not exceed one hundred eighty (180) days, for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(d) above) shall not exceed two hundred seventy (270) days. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity
and/or Network Upgrades such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “Capacity Damages” to Buyer, in an amount equal to for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity, Exhibit Q and other applicable portions of the Agreement shall be adjusted accordingly. Capacity Damages shall not be offset or reduced by the posting of Development Security, Performance Assurance, or the payment of Delay Damages, or any other form of liquidated damages under this Agreement.

6. **Buyer’s Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller’s payment obligation thereof.
EXHIBIT C

COMPENSATION

(a) Monthly Compensation. Each month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a Monthly Capacity Payment equal to (i) the Storage Rate x Effective Capacity x Efficiency Rate Factor, minus (ii) an amount equal to the Monthly Average Cost of Charging Energy, multiplied by the total number of MWhs of Idle Period Auxiliary Use in such month, divided by the Efficiency Rate. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Product. If the Effective Capacity is adjusted pursuant to a Capacity Test other than the first day of a calendar month, payment shall be calculated separately for each portion of the month in which the different Effective Capacity is applicable.

“Monthly Average Cost of Charging Energy” means, for each month of the Delivery Term, an amount equal to the Charging Energy-weighted average Real-Time Market Locational Marginal Price at the Delivery Point.

“Efficiency Rate Factor” means:

(i) If the Efficiency Rate is greater than or equal to the Guaranteed Efficiency Rate, then:

   Efficiency Rate Factor = 100%

(ii) If the Efficiency Rate is less than the Guaranteed Efficiency Rate, but greater than or equal to %, then:

   Efficiency Rate Factor = 100% - [(Guaranteed Efficiency Rate – Efficiency Rate) x .5]

(iii) If the Efficiency Rate is less than %, then:

   Efficiency Rate Factor = 0

(b) Capacity Availability Payment True-Up. Each month during the Delivery Term, Buyer shall calculate the year-to-date (YTD) Annual Capacity Availability for the applicable Contract Year in accordance with Exhibit P. If (i) such YTD Annual Capacity Availability is less than ninety percent (90%), or (ii) the final Annual Capacity Availability for the applicable Contract Year is less than the Guaranteed Capacity Availability, Buyer shall (1) withhold the Capacity Availability Payment True-Up Amount from the next Monthly Capacity Payment(s) (the “Capacity Availability Payment True-Up”), and (2) provide Seller with a written statement of the calculation of the YTD Annual Capacity Availability and the Capacity Availability Payment True-Up Amount; provided, if the Capacity Availability Payment True-Up Amount is a negative number for any month prior to the final year-end Capacity Availability Payment True-Up calculation, Buyer shall not be obligated to reimburse Seller any previously withheld Capacity Availability Payment True-Up Amount, except as set forth in the following sentence. If Buyer withholds any Capacity Availability Payment True-Up Amount pursuant to subsection (b)(i)
above, and if the final year-end Capacity Availability Payment True-Up Amount is a negative number, Buyer shall pay to Seller the absolute value of such amount together with the next Monthly Capacity Payment due to Seller.

“Capacity Availability Payment True-Up Amount” means an amount equal to A x B - C, where:

A = The sum of the year-to-date Monthly Capacity Payments
B = The Capacity Availability Factor
C = The sum of any Capacity Availability Payment True-Up Amounts previously withheld by Buyer in the applicable Contract Year.

“Capacity Availability Factor” means:

(i) If the YTD Annual Capacity Availability times the Effective Capacity is equal to or greater than the Guaranteed Capacity Availability times the Effective Capacity, then:

Capacity Availability Factor = 0

(ii) If the YTD Annual Capacity Availability times the Effective Capacity is less than the Guaranteed Capacity Availability times the Effective Capacity, but the product of (A) (I) YTD Annual Capacity Availability plus (II) Force Majeure Unavailability, times (B) the Effective Capacity is greater than or equal to seventy percent (70%) of the Installed Capacity, then:

Capacity Availability Factor = Guaranteed Capacity Availability – YTD Annual Capacity Availability

(iii) If the product of (A) (I) YTD Annual Capacity Availability plus (II) Force Majeure Unavailability, times (B) the Effective Capacity is less than seventy percent (70%) of the Installed Capacity, then:

Capacity Availability Factor = (Guaranteed Capacity Availability – YTD Annual Capacity Availability) * 1.5 – (Force Majeure Unavailability * 0.5)

“Force Majeure Unavailability” means Total YTD Unavailable Calculation Intervals that resulted from a Force Majeure Event for which Seller is the claiming party, divided by the Total YTD Calculation Intervals.

provided, if the result of any of the calculations in clauses (ii) or (iii) above is greater than 1.0, then the Capacity Availability Factor will be deemed to be equal to 1.0.

(c) Tax Credits. The Parties agree that the Storage Rate is not subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are
unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller’s or the Facility’s eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller’s accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller’s obligation to deliver Facility Energy and Product, shall be effective regardless of whether construction of the Facility (or any portion thereof) or the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.
EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) **Buyer as Scheduling Coordinator for the Facility.** Upon CAISO Commercial Operation, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt (as applicable) of Charging Energy, Facility Energy and the Product at the Delivery Point. At least thirty (30) days prior to CAISO Commercial Operation, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer or its designated SC as the Scheduling Coordinator for the Facility effective as of CAISO Commercial Operation, and (ii) Buyer shall, and shall cause its designated SC to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designated SC as the Scheduling Coordinator for the Facility effective as of CAISO Commercial Operation. The Parties acknowledge that they will need to provide the CAISO a fixed date for the transition of the Scheduling Coordinator for the Facility and that the actual date on which CAISO Commercial Operation occurs may be later than the date on which Buyer or its designated SC becomes recognized by CAISO as the Scheduling Coordinator for the Facility. The Parties will cooperate reasonably to minimize any such period and to coordinate CAISO scheduling for the Facility during such period, and Buyer will pass through to Seller all CAISO settlements relating to the Facility with respect to the period prior to CAISO Commercial Operation promptly after Buyer or its designee receives such settlements from the CAISO. On and after CAISO Commercial Operation, Seller shall not authorize or designate any other party to act as the Facility’s Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator for the Facility, and, except as otherwise set forth herein, Seller shall not revoke Buyer’s authorization to act as the Facility’s Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility’s SC) shall submit bids to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market, real time or other market basis that may develop after the Effective Date, as determined by Buyer.

(b) **Notices.** Buyer (as the Facility’s SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility’s status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller shall cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically or electronic mail to the personnel designated to receive such information.

(c) **CAISO Costs and Revenues.** Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Delivery Point and Charging Energy delivered to the Facility. Seller shall be responsible for all CAISO costs and penalties (including costs associated with Imbalance Energy)
resulting from any deviations from Charging Notices or Discharging Notices or otherwise charging or discharging the Facility when not subject to a Charging Notice or Discharging Notice, or any failure by Seller to abide by the CAISO Tariff, the terms of this Agreement or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer’s failure to perform its duties as Scheduling Coordinator for the Facility). Buyer or its designated SC shall make commercially reasonable efforts to cooperate with Seller to allow Seller to make Resource Adequacy substitutions with respect to such outages as permitted by the CAISO Tariff. The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller’s account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller’s account (except to the extent any Non-Availability Charges are incurred due to Buyer’s failure to perform its duties as Scheduling Coordinator for the Facility). In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller’s responsibility.

(d) **CAISO Settlements.** Buyer (as the Facility’s SC) shall be responsible for all settlement functions with the CAISO related to the Facility on and after CAISO Commercial Operation. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties (“**CAISO Charges Invoice**”) for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer shall review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer’s existing settlement processes for charges that are Buyer’s responsibilities. Subject to Seller’s right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller’s receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for such CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section (d) of Exhibit D with respect to payment of CAISO Charges Invoices in respect of performance prior to the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

(e) **Dispute Costs.** Buyer (as the Facility’s SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer’s reasonable costs and expenses (including reasonable attorneys’ fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute, except to the extent such dispute arises from Buyer’s failure to perform its duties as Scheduling Coordinator for the Facility.

(f) **Terminating Buyer’s Designation as Scheduling Coordinator.** At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the
designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) **Master Data File and Resource Data Template.** Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO’s Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party’s prior written consent.

(h) **NERC Reliability Standards.** Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller’s compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer’s possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller’s compliance with NERC reliability standards.
EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.

2. Facility description.

3. Site plan of the Facility.

4. Description of any material planned changes to the Facility or the Site.

5. Gantt chart schedule showing progress on achieving each of the Milestones.

6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.

7. Forecast of activities scheduled for the current calendar quarter.

8. Written description about the progress relative to Seller’s Milestones, including whether Seller has met or is on target to meet the Milestones.

9. List of issues that are reasonably likely to affect Seller’s Milestones.

10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.

11. Progress and schedule of all material agreements, contracts, permits (including Material Permits), approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.

12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.

13. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.

14. Any other documentation reasonably requested by Buyer.
**EXHIBIT F-1**

**FORM OF MONTHLY EXPECTED AVAILABLE CAPACITY REPORT**

[Available Capacity, MW Per Hour] – [Insert Month]

|       | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|-------|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Day 1 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 2 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 3 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 4 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 5 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

[insert additional rows for each day in the month]

|       | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|-------|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Day 29|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 30|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 31|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

Exhibit F - 1

Agenda Page 363
**EXHIBIT F-2**

**FORM OF MONTHLY EXPECTED AVAILABLE STORAGE CAPABILITY REPORT**

[Stored Energy Capability, MWh Per Hour] – [Insert Month]

|       | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|-------|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Day 1 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 2 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 3 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 4 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 5 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

[insert additional rows for each day in the month]

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The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.
EXHIBIT G

FORM OF DAILY AVAILABILITY NOTICE

Trading Day: ______________________

Station: ______________________  Issued By: ______________________

Unit: ______________________  Issued At: ______________________

Unit 100% Available No Restrictions: ______________________

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Comments: ______________________

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Exhibit G - 1
EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“Certification”) of Commercial Operation is delivered by _____ [licensed professional engineer] (“Engineer”) to Clean Power Alliance of Southern California, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Energy Storage Agreement dated _____ (“Agreement”) by and between [Seller] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of ______[DATE]_____, Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

2. The Facility’s Installed Capacity is no less than ninety-five percent (95%) of the Guaranteed Capacity and the Facility is capable of charging, storing and discharging Energy, all within the operational constraints and subject to the applicable Operating Restrictions.

3. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on___[DATE]____.

4. The Transmission Provider has provided documentation supporting full unrestricted release of the Facility for Commercial Operation by [Name of Transmission Provider as appropriate] on ______[DATE]____.

5. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on ______[DATE]____.

6. Seller has segregated and separately metered Station Use to the extent reasonably possible in accordance with Prudent Operating Practice, and any such meter(s) have the same or greater level of accuracy as is required for CAISO certified meters used for settlement purposes.

7. The Facility and its meters have been designed and installed in a manner such that all Energy used for Auxiliary Use and Station Use within the Facility is separately metered.

8. The total rated power of the Facility inverters is at least equal to the Installed Capacity (MW) charging and discharging at 45°C ambient air temperature.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this ______ day of ____________, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By:______________________________

Exhibit H - 1
EXHIBIT I

FORM OF CAPACITY TEST CERTIFICATE

This certification ("Certification") of Capacity Test results is delivered by [licensed professional engineer] ("Engineer") to Clean Power Alliance of Southern California, a California joint powers authority ("Buyer") in accordance with the terms of that certain Energy Storage Agreement dated ____________ ("Agreement") by and between [SELLER ENTITY] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify that a Capacity Test conducted on [Date] demonstrated (i) an [Installed or Effective] Capacity of __ MW to the Delivery Point at four (4) hours of continuous discharge, (ii) a Battery Charging Factor of __%, and (iii) a Battery Discharging Factor of __%, all in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _______ day of ______________, 20__.  

[LICENSED PROFESSIONAL ENGINEER]

By:______________________________

Its:______________________________

Date:____________________________
EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("Certification") is delivered by [SELLER ENTITY] ("Seller") to Clean Power Alliance of Southern California, a California joint powers authority ("Buyer") in accordance with the terms of that certain Energy Storage Agreement dated ____________ ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

(1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.

(2) the Construction Start Date occurred on ____________ (the "Construction Start Date"); and

(3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

____________________________________________________________________

(such description shall amend the description of the Site in Exhibit A of the Agreement).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ___ day of __________.

[SELLER ENTITY]

By:____________________________________
Its:___________________________________

Date:__________________________________

Exhibit J - 1
EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date: 
Bank Ref.: 
Amount: US$[XXXXXXXX]

Beneficiary:

Clean Power Alliance of Southern California,
a California joint powers authority
801 S Grand, Suite 400
Los Angeles, CA 90017

Ladies and Gentlemen:

By the order of __________ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of Clean Power Alliance of Southern California, a California joint powers authority (“Beneficiary”), 801 S Grand, Suite 400, Los Angeles, CA 90017, for an amount not to exceed the aggregate sum of U.S. $[XXXXXX] (United States Dollars [XXXXX] and 00/100) (the “Available Amount”), pursuant to that certain Energy Storage Agreement dated as of ______ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall be of no further force or effect at 5:00 p.m., California time, on [Date] or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit, the “Expiration Date”).

For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in Los Angeles, California.

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before 5:00 p.m. California time, on or before the Expiration Date of a copy of this Letter of Credit No. [XXXXXXX] and all amendments accompanied by Beneficiary’s dated statement purportedly signed by Beneficiary’s duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Issuer by facsimile at [facsimile number for draws] or such other number as specified from time-to-time by the Issuer.
The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile
transmittal are deemed to be the operative instrument without the need of originally signed
documents.

Issuer hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of
Credit will be duly honored if presented to the Issuer before the Expiration Date. All
correspondence and any drawings (other than those made by facsimile) hereunder are to be directed
to [Issuer address/contact]. Issuer undertakes to make payment to Beneficiary under this Standby
Letter of Credit within three (3) business days of receipt by Issuer of a properly presented Drawing
Certificate. The Beneficiary shall receive payment from Issuer by wire transfer to the bank account
of the Beneficiary designated in the Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full
force and effect with respect to any continuing balance; provided, the Available Amount shall be
reduced by the amount of each such drawing.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an
amendment for a one year period (or, if such period ends on a day that is not a Business Day, until
the next Business Day thereafter) beginning on the present Expiration Date hereof and upon each
anniversary for such date (or, if such period ends on a day that is not a Business Day, until the next
Business Day thereafter), unless at least one hundred twenty (120) days prior to any such
Expiration Date Issuer has sent Beneficiary written notice by overnight courier service at the
address provided below that Issuer elects not to extend this Letter of Credit, in which case it will
expire on its then current Expiration Date. No presentation made under this Letter of Credit after
such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or
agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer
relating to the obligations of Issuer hereunder.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby
Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the
“ISP”). As to matters not covered by the ISP, the laws of the State of California, without regard to
the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of
Credit.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of
Credit Department at [insert bank address information], referring specifically to Issuer’s Letter of
Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer’s Standby Letter of
Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter,
overnight courier, or delivered in person to: Clean Power Alliance of Southern California, a
California joint powers authority, Chief Financial Officer, 801 S Grand, Suite 400, Los Angeles,
CA 90017. Only notices to Beneficiary meeting the requirements of this paragraph shall be
considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall
be void and of no force or effect.
EXHIBIT A

(DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of [ ], [ADDRESS], as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of __________ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Energy Storage Agreement dated as of __________, 20__ (the “Agreement”).

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $___________ because a Seller Event of Default (as such term is defined in the Agreement) has occurred.

or

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $___________, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [ ] and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [ ] by wire transfer in immediately available funds to the following account:

[Specify account information]

[ ]

_______________________________
Name and Title of Authorized Representative

Date___________________________
This Replacement RA Notice (this “Notice”) is delivered by [SELLER ENTITY] ("Seller") to Clean Power Alliance of Southern California, a California joint powers authority ("Buyer") in accordance with the terms of that certain Energy Storage Agreement dated __________ ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.5 of the Agreement, Seller hereby provides the below Replacement RA product information:

### Unit Information

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<td>CAISO Resource ID</td>
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<td>Unit SCID</td>
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</table>

| Prorated Percentage of Unit Factor |                  |
| Resource Type                |                  |
| Point of Interconnection with the CAISO Controlled Grid ("substation or transmission line") |                  |
| Path 26 (North or South)      |                  |
| LCR Area (if any)            |                  |

| Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment |                  |
| Run Hour Restrictions         |                  |
| Delivery Period                |                  |

<table>
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1 To be repeated for each unit if more than one.
[SELLER ENTITY]

By: ____________________________
Its: ____________________________

Date: ____________________________
**EXHIBIT N**

**NOTICES**

<table>
<thead>
<tr>
<th>SAGEBRUSH ESS IIB, LLC</th>
<th>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>(“Seller”)</td>
<td>(“Buyer”)</td>
</tr>
</tbody>
</table>

### All Notices:

- **Street:** 437 Madison Avenue, 22nd Floor, Suite A
- **City:** New York, NY 10022
- **Attn:** Contracts Administrator
- **Phone:** (646) 829-3900
- **Email:** legal@terra-gen.com
- **With Copy to**
  - **Attn:** Jeff Cast
  - **Phone:** (646) 829-3909
  - **Email:** jcast@terra-gen.com

### Reference Numbers:
- **To be provided.**
- **Duns:**
- **Federal Tax ID Number:**

### Invoices:
- **Attn:** Accounts Payable
- **Phone:** (646) 829-3912
- **E-mail:** kfranqui@terra-gen.com

### Scheduling:
- **Attn:** Naomi Brown
- **Phone:** (661) 428-1130
- **Email:** nbrown@terra-gen.com

### Confirmations:
- **Attn:** Naomi Brown
- **Phone:** (661) 428-1130
- **Email:** nbrown@terra-gen.com

### Payments:
- **Attn:** Carrie Lackey, VP Treasurer
- **Phone:** (646) 829-3922
- **E-mail:** clackey@terra-gen.com

<table>
<thead>
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<th>All Notices:</th>
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</thead>
<tbody>
<tr>
<td><strong>Street:</strong> 801 S Grand, Suite 400</td>
<td></td>
</tr>
<tr>
<td><strong>City:</strong> Los Angeles, CA 90017</td>
<td></td>
</tr>
<tr>
<td><strong>Attn:</strong> Chief Executive Officer</td>
<td></td>
</tr>
<tr>
<td><strong>Phone:</strong> (213) 269-5870</td>
<td></td>
</tr>
<tr>
<td><strong>E-mail:</strong> <a href="mailto:tbardacke@cleanpoweralliance.org">tbardacke@cleanpoweralliance.org</a></td>
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### Reference Numbers:
- **Duns:**
- **Federal Tax ID Number:**

### Invoices:
- **Attn:** CPA Settlements
- **Phone:** (213) 269-5870
- **E-mail:** settlements@cleanpoweralliance.org

### Scheduling:
- **Attn:** Day Ahead Scheduling
- **Phone:** (817) 303-1104
- **Email:** TenaskaComm@tnsk.com

### Confirmations:
- **Attn:** Vice President, Power Supply
  - **Email:** energycontracts@cleanpoweralliance.org

### Payments:
- **Attn:** Vice President, Power Supply
  - **E-mail:** settlements@cleanpoweralliance.org
<table>
<thead>
<tr>
<th>SAGEBRUSH ESS IIB, LLC (&quot;Seller&quot;)</th>
<th>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority (&quot;Buyer&quot;)</th>
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</thead>
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<td><strong>Wire Transfer:</strong></td>
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<td>BNK:</td>
<td>BNK: River City Bank</td>
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<tr>
<td>ABA:</td>
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</table>
EXHIBIT O

CAPACITY TESTS

Capacity Test Notice and Frequency

A. Commercial Operation Capacity Test(s). Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Capacity Test (and any subsequent Commercial Operation Capacity Test permitted in accordance with Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Capacity (subject to update in accordance with Exhibit B) and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Facility determined by such Commercial Operation Capacity Test(s).

B. Subsequent Capacity Tests. Following the Commercial Operation Capacity Test(s), at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Capacity Test. In addition, Buyer shall have the right to require a retest of the Capacity Test at any time upon no less than five (5) Business Days prior Notice to Seller if Buyer provides data with such Notice reasonably indicating that the then-current Effective Capacity or Efficiency Rate have varied materially from the results of the most recent prior Capacity Test; Seller shall have the right to run a retest of any Capacity Test at any time upon five (5) Business Days’ prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Effective Capacity and Efficiency Rate. No later than five (5) days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Facility Meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.4(a)(ii) of the Agreement and Part II(I) below, for each Capacity Test after the Commercial Operation Capacity Test(s), the Effective Capacity (up to, but not in excess of, the Installed Capacity) and Efficiency Rate determined pursuant to such Capacity Test shall become the new Effective Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Monthly Capacity Payment and all other purposes under this Agreement.

Capacity Test Procedures

PART I. GENERAL.

A. Each Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. For ease of reference, a Capacity Test is sometimes referred to in this Exhibit O as a “CT”. Buyer or its representative may be present for the CT and may, for informational
purposes only, use its own metering equipment (at Buyer’s sole cost).

B. Conditions Prior to Testing.

1. EMS Functionality. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3 data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.

2. Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between the RTU and the Facility SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between the RTU and Seller’s EMS interface and the ability to record SCADA System data.

3. Commissioning Checklist. Commissioning shall be successfully completed per manufacturer guidance on all applicable installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.

PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

A. Test Elements. Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit O, unless the Parties mutually agree to deviations therefrom. The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the Test will still be deemed “complete,” and any adjustments necessary to the Effective Capacity or the Efficiency Rate resulting from such Test, if applicable, will be made in accordance with this Exhibit O.

1. Electrical output at maximum discharging level (MW) for four (4) continuous hours; and

2. Electrical input at maximum charging level at the Facility Meter (MW), as sustained until the SOC reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the Facility Meter (MW), as sustained until the SOC reaches 100%, not to exceed five and one-half (5.5) hours of total charging time.

B. Parameters. During each CT, the following parameters shall be measured and recorded simultaneously for the Facility, at two (2) second intervals:

1. Time;

2. The amount of Facility Energy;

3. The amount of Charging Energy;
(4) The amount of Station Use;

(5) Stored Energy Level (MWh).

C. **Site Conditions.** During each CT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:

(1) Relative humidity (%);

(2) Barometric pressure (inches Hg); and

(3) Ambient air temperature (°F).

D. **Test Showing.** Each CT shall record and report the following datapoints:

(1) That the CT successfully started;

(2) The maximum sustained discharging level for four (4) consecutive hours pursuant to A(1) above;

(3) The maximum sustained charging level until SOC reaches at least 90% pursuant to A(2) above;

(4) Amount of time between the Facility’s electrical output going from 0 to the maximum sustained discharging level registered during the CT (for purposes of calculating the ramp rate);

(5) Amount of time between the Facility’s electrical input going from 0 to the maximum sustained charging level registered during the CT (for purposes of calculating the ramp rate);

(6) Amount of Charging Energy to go from 0% SOC to 100% SOC;

(7) Amount of Facility Energy to go from 100% SOC to 0% SOC.

(8) Amount of Charging Energy (as reported under Section II.D(6) above) (such result, “Energy In”);

(9) Amount of Facility Energy (as reported under Section II.D(7) above) (such result, “Energy Out”).

E. **Test Conditions.**

(1) **General.** At all times during a CT, the Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Facility.
Abnormal Conditions. If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT, Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.

Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.

Incomplete Test. If any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Capacity or Efficiency Rate pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated within a reasonable specified time period. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.

Test Report. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer the completed Capacity Test Certificate, together with a written report of the results of the CT, which report shall include:

1. A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;

2. The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and

3. Seller’s statement of either Seller’s acceptance of the CT or Seller’s rejection of the CT results and reason(s) therefor.

Seller’s CT report and any submitted Capacity Test Certificate shall be deemed invalid if not delivered to Buyer within (5) Business Days after the completion of any CT. Within five (5) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer’s acceptance of the CT results or Buyer’s rejection of the CT and reason(s) therefor.

If either Party rejects the results of any CT, such CT shall be repeated in accordance with Part II.F.

Supplementary Capacity Test Protocol. No later than sixty (60) days prior to commencing Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then-current design of the Facility.
Facility ("Supplementary Capacity Test Protocol"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then-current Supplementary Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

I. Adjustment to Effective Capacity and Efficiency Rate. The Effective Capacity and Efficiency Rate shall be updated as follows:

(1) The total amount of Facility Energy delivered to the Delivery Point (expressed in MWh AC) during the time period comprised of (x) the first four (4) hours of discharge, plus (y) the time required for ramping the Facility from 0 MW to the maximum discharging level as limited by CAISO (up to, but not in excess of, the product of (i) (a) the Guaranteed Capacity (in the case of a Commercial Operation Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Capacity (in the case of any other Capacity Test), multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the Effective Capacity, which shall be expressed in MW, and shall be the new Effective Capacity in accordance with Section 4.4(a)(ii) of the Agreement.

(2) The quotient of (x) total amount of Energy Out (as reported under Section II.D(9) above), plus the total amount of Idle Period Auxiliary Use for which Seller is required to reimburse Buyer during the Capacity Test, divided by (y) the total amount of Energy In (as reported under Section II.D(8) above), and expressed as a percentage, shall be recorded as the Efficiency Rate, and shall be used for the calculation of the Efficiency Rate Factor in Exhibit C until updated pursuant to a subsequent Capacity Test.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. Effective Capacity Test

• Procedure:

(1) System Starting State: The Facility will be in the on-line state at 0% SOC.

(2) Record the initial value of the SOC.

(3) Command a real power charge that results in an AC power of Facility’s maximum charging level, and continue charging until the earlier of (a) the Facility has reached 100% SOC or (b) five and one-half (5.5) hours have elapsed since the Facility commenced charging.

(4) Record and store the SOC after the earlier of (a) the Facility has reached 100% SOC or (b) five and one-half (5.5) hours of continuous charging.
Such data point shall be used for purposes of calculation of the Battery Charging Factor.

(5) Record and store the Charging Energy.

(6) Following a one (1) hour rest period, command a real power discharge that results in an AC power output of the Facility’s maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Facility has reached 0% SOC, or (c) the sustained discharging level is at least 2% less than the maximum discharging level.

(7) Record and store the SOC after four (4) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor. If the Facility SOC remains above zero percent (0%) after discharging at a rate at or above the Guaranteed Capacity (or at or above the Installed Capacity after a Commercial Operation Capacity Test) for four (4) consecutive hours pursuant to Part III.A.6(a), the SOC will be deemed 0% for the purposes of calculating the Battery Discharging Factor.

(8) Record and store the Facility Energy. Such data point shall be used for purposes of calculation of the Effective Capacity.

(9) If the Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Facility until it reaches a 0% SOC. Record and store the additional Facility Energy, if applicable.

(10) Record and store the Facility Energy (in MWh) as measured at the Facility Meter, if applicable.

- **Test Results**
  
  (1) The resulting Effective Capacity measurement is the sum of the total Facility Energy at the Facility Meter divided by four (4) hours.

### B. AGC Discharge Test

- **Purpose:** This test will demonstrate the AGC discharge capability to achieve the Facility’s maximum discharging level within 1 second, not including any time required to comply with CAISO-imposed ramp rate limitations.
- **System starting state:** The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.
- **Procedure:**

  (1) Record the Facility active power level at the Facility Meter.
(2) Command the Facility to follow a simulated CAISO RIG signal of \( P_{\text{max}} \) at .95 power factor for ten (10) minutes.

(3) Record and store the Facility active power response (in seconds).

- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

C. **AGC Charge Test**

- **Purpose**: This test will demonstrate the AGC charge capability to achieve the Facility’s full charging level within 1 second, not including any time required to comply with CAISO-imposed ramp rate limitations.
- **System starting state**: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow a predefined agreed-upon active power profile.
- **Procedure**:
  
  (1) Record the Facility active power level at the Facility Meter.

  (2) Command the Facility to follow a simulated CAISO RIG signal of \(-P_{\text{max}}\) at .95 power factor for ten (10) minutes.

  (3) Record and store the Facility active power response (in seconds).

- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

D. **Reactive Power Production Test**

- **Purpose**: This test will demonstrate the reactive power production capability of the Facility.
- **System starting state**: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow an agreed-upon predefined reactive power profile.
- **Procedure**:

  (1) Record the Facility reactive power level at the Facility Meter.

  (2) Command the Facility to follow twenty (20) MVAR for ten (10) minutes.

  (3) Record and store the Facility reactive power response.

- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.
E. Reactive Power Consumption Test

- Purpose: This test will demonstrate the reactive power consumption capability of the facility.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
  1. Record the Facility reactive power level at the Facility Meter.
  2. Command the Facility to follow negative twenty (-20) MVAR for ten (10) minutes.
  3. Record and store the Facility reactive power response.

System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.
EXHIBIT P

ANNUAL CAPACITY AVAILABILITY CALCULATION

(a) Following the end of each calendar month during the Delivery Term Buyer shall calculate the year-to-date (YTD) “Annual Capacity Availability” for the current Contract Year using the formula set forth below:

\[
\text{Annual Capacity Availability (\%) = } \frac{1 - \text{Unavailable Calculation Intervals}}{\text{Total YTD Calculation Intervals}}
\]

“Calculation Interval” or “C.I.” means each successive five-minute interval, but excluding all such intervals which by the express terms of the Agreement are disregarded or excluded.

“Unavailable Calculation Intervals” means the sum of year-to-date unavailable Calculation Intervals for the applicable Contract Year, where for each Calculation Interval:

\[
\text{Unavailable Calculation Interval } = 1 \text{ C.I. } \times \left( 1 - \text{the lesser of:} \begin{array}{c} \frac{A}{\text{Effective Capacity}} \\ \frac{B}{\text{Effective Capacity} \times 4 \text{ hrs}} \end{array} \right)
\]

“A” is the “Available Effective Capacity”, which shall be calculated as the sum of the available capacity of each of the system inverters, in MW AC, expected from all system inverters to (considering the conditions of the Facility in total) receive Charging Energy from and deliver Facility Energy to the Delivery Point, in such Calculation Interval (based on normal operating conditions pursuant to the manufacturer’s guidelines), but “A” shall never exceed the Effective Capacity.

“B” is the “Available Storage Capability”, which shall be calculated as the sum of the following (taking into account the SOC at the time of calculation and the Operating Restrictions): (i) the energy throughput capability (in MWhs) in the applicable Calculation Interval that the Facility is available to be charged (calculated as the available battery capability (in MWh) to receive Charging Energy from the Delivery Point in the applicable Calculation Interval x the Battery Charging Factor) and (ii) the energy throughput capability in MWhs in the applicable Calculation Interval that the Facility is available to be discharged to the Delivery Point (calculated as the available battery capability (in MWh) to deliver Facility Energy to the Delivery Point in the applicable Calculation Interval x the Battery Discharging Factor). In calculating Available Storage Capability, the “available battery charging capability” and “available battery discharging capability” are calculated.
as the product of (1) the count of available system cells in such Calculation Interval, multiplied by (2) the capability, in MWh, expected from each such system cell (based on normal operating conditions pursuant to the manufacturer’s guidelines) that are able (considering the conditions of the Facility in total) to receive Charging Energy from and deliver Facility Energy to the Delivery Point, but Available Storage Capability shall never exceed the Effective Capacity x four (4) hours.

“Total YTD Calculation Intervals” means, for each applicable Contract Year, the total number of Calculation Intervals year-to-date up through and including the month for which the Annual Storage Capacity Availability is being calculated.

(b) The Available Effective Capacity and Available Storage Capability in the above calculations shall be the lower of (i) such amounts reported by Seller’s real-time EMS data feed to Buyer for the Facility for such Calculation Interval, and (ii) Seller’s most recent Availability Notice (as updated pursuant to Section 4.10). Except as otherwise expressly provided in this Agreement, the calculations of Available Effective Capacity and Available Storage Capability in the foregoing sentence shall be based solely on the availability of the Facility to charge or discharge Energy between the Facility and the Delivery Point, as applicable (excluding for reasons at the high-voltage side of the Delivery Point or beyond). Any Calculation Interval in which the Facility fails to maintain connectivity to the CAISO such that it cannot receive ADS or AGC signals shall be deemed an Unavailable Calculation Interval; provided, such Calculation Interval shall not be deemed an Unavailable Calculation Interval if the Facility loses connectivity to the CAISO due to reasons at the high-voltage side of the Delivery Point or beyond, including any failure of CAISO, Buyer, or Buyer’s SC facilities, systems, communications links or other equipment.

(c) If the total rated power of the Facility inverters as measured to the Delivery Point is less than the Installed Capacity (measured in MW) for both charging and discharging at less than or equal to 45°C, then Buyer shall have the right, in its reasonable discretion, to apply an ambient air temperature availability derate to the applicable Calculation Interval when the ambient air temperature exceeds 45°C.
EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date; provided, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller’s operation of the Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Facility, and (iv) may include facility scheduling, operating restrictions and Communications Protocols.

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<tr>
<td>Storage Unit Name:</td>
<td>[Unit Name and Number]</td>
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**A. Contract Capacity**

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<th>Guaranteed Capacity (MW):</th>
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<td>Effective Capacity (MW):</td>
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**B. Total Unit Dispatchable Range Information**

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<td>Minimum Storage Level (MWh):</td>
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<tr>
<td>Maximum Discharge (MW):</td>
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<td>Maximum Charge (MW):</td>
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**Guaranteed Efficiency Rate:** See Cover Sheet

**Maximum annual energy throughput (BET) (Discharged MWh/Contract Year):**

*Any Idle Period Auxiliary Use does not count towards maximum energy throughput.*

<table>
<thead>
<tr>
<th>Maximum energy throughput (BET) (Discharged MWh/Contract Year):</th>
<th>$8,400 MWh/Contract Year</th>
</tr>
</thead>
</table>

**Excess annual energy throughput allowance (BET) (Discharged MWh/Contract Year):**

Not to exceed 159 MWh in any Contract Year

**Excess energy discharge cost:**

$10.00/MWh of Facility Energy

**C. Charge and Discharge Rates**

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<tr>
<th>Mode</th>
<th>Maximum (MW)</th>
<th>Ramp Rate (MW/s) Description</th>
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<tbody>
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<td>Energy (Charge)</td>
<td>200 MW/min</td>
<td>Ramp Rate does not include CAISO limitations imposed on the dispatch</td>
</tr>
<tr>
<td>Energy (Discharge)</td>
<td>200 MW/min</td>
<td>Ramp Rate does not include CAISO limitations imposed on the dispatch</td>
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Exhibit Q - 1
D. Ancillary Services

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<tbody>
<tr>
<td>Spinning Reserve is included:</td>
<td>Yes</td>
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</table>

Other operating restrictions:

1. The average resting State of Charge per Contract Year must be below [redacted].

2. [redacted], in coordination with Seller, [redacted] which may exceed the Maximum Storage Level specified above. Following this charge, Buyer may hold the State of Charge or discharge the Facility to Buyer’s desired State of Charge.

3. [redacted] Buyer and Seller shall cooperate in good faith to determine operating protocol for the remaining portion of the Contract Year to satisfy the operating restriction set forth in this Operating Restriction 3.
EXHIBIT R

METERING DIAGRAM

To 230 kV Interconnection Point – SCE
Vincent substation

Main Step-up Transformers
Other Projects

Other Projects

Facility

Facility Meter/CAISO Meter

34.5 kV Substation Collection Bus

MV Transformers/Inverters

Energy Storage

MW

CAISO Meters

Other projects
EXHIBIT S

FORM OF CONSENT TO COLLATERAL ASSIGNMENT

This Consent to Collateral Assignment (this “Consent”) is entered into among (i) Clean Power Alliance of Southern California, a California joint powers authority (“CPA”), (ii) [Name of Seller], a [Legal Status of Seller] (the “Project Company”), and (iii) [Name of Collateral Agent], a [Legal Status of Collateral Agent], as Collateral Agent for the secured parties under the Financing Documents referred to below (such secured parties together with their successors permitted under this Consent in such capacity, the “Secured Parties”, and, such agent, together with its successors in such capacity, the “Collateral Agent”). CPA, Project Company and Collateral Agent are hereinafter sometimes referred to individually as a “Party” and jointly as the “Parties”. Capitalized terms used but not otherwise defined in this Consent shall have the meanings ascribed to them in the ESA (as defined below).

RECITALS

The Parties enter into this Consent with reference to the following facts:

A. Project Company and CPA have entered into that certain Energy Storage Agreement, dated as of [Date] [List all amendments as contemplated by Section 3.4] (“ESA”), pursuant to which Project Company will develop, construct, commission, test and operate the Storage Units (the “Project”) and sell the Product to CPA, and CPA will purchase the Product from Project Company;

B. As collateral for Project Company’s obligations under the ESA, Project Company has agreed to provide to CPA certain collateral, which may include Performance Security and Development Security and other collateral described in the ESA (collectively, the “ESA Collateral”);

C. Project Company has entered into that certain [Insert description of financing arrangements with Lender], dated as of [Date], among Project Company, the Lenders party thereto and the Collateral Agent (the “Financing Agreement”), pursuant to which, among otherthings, the Lenders have extended commitments to make loans to Project Company;

D. As collateral security for Project Company’s obligations under the Financing Agreement and related agreements (collectively, the “Financing Documents”), Project Company has, among other things, assigned all of its right, title and interest in, to and under the ESA and Project’s Company’s owners have pledged their ownership interest in Project Company (collectively, the “Assigned Interest”) to the Collateral Agent pursuant to the Financing Documents; and

E. It is a requirement under the Financing Agreement and the ESA that CPA and the other Parties hereto shall have executed and delivered this Consent.

AGREEMENT

In consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereto hereby agree as follows:

Exhibit S - 1
SECTION 1. CONSENT TO ASSIGNMENT, ETC.

1.1 Consent and Agreement.

CPA hereby acknowledges:

(a) Notice of and consents to the assignment as collateral security to Collateral Agent, for the benefit of the Secured Parties, of the Assigned Interest; and

(b) The right (but not the obligation) of Collateral Agent in the exercise of its rights and remedies under the Financing Documents, to make all demands, give all notices, take all actions and exercise all rights of Project Company permitted under the ESA (subject to CPA’s rights and defenses under the ESA and the terms of this Consent) and accepts any such exercise; provided, insofar as the Collateral Agent exercises any such rights under the ESA or makes any claims with respect to payments or other obligations under the ESA, the terms and conditions of the ESA applicable to such exercise of rights or claims shall apply to Collateral Agent to the same extent as to Project Company.

1.2 Project Company’s Acknowledgement.

Each of Project Company and Collateral Agent hereby acknowledges and agrees that CPA is authorized to act in accordance with Collateral Agent’s instructions, and that CPA shall bear no liability to Project Company or Collateral Agent in connection therewith, including any liability for failing to act in accordance with Project Company’s instructions.

1.3 Right to Cure.

If Project Company defaults in the performance of any of its obligations under the ESA, or upon the occurrence or non-occurrence of any event or condition under the ESA which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable CPA to terminate or suspend its performance under the ESA (a “ESA Default”), CPA will not terminate or suspend its performance under the ESA until it first gives written notice of such ESA Default to Collateral Agent and affords Collateral Agent the right to cure such ESA Default within the applicable cure period under the ESA, which cure period shall run concurrently with that afforded Project Company under the ESA. In addition, if Collateral Agent gives CPA written notice prior to the expiration of the applicable cure period under the ESA of Collateral Agent’s intention to cure such ESA Default (which notice shall include a reasonable description of the time during which it anticipates to cure such ESA Default) and is diligently proceeding to cure such ESA Default, notwithstanding the applicable cure period under the ESA, Collateral Agent shall have a period of sixty (60) days (or, if such ESA Default is for failure by the Project Company to pay an amount to CPA which is due and payable under the ESA other than to provide ESA Collateral, thirty (30) days, or, if such ESA Default is for failure by Project Company to provide ESA Collateral, ten (10) Business Days) from the Collateral Agent’s receipt of the notice of such ESA Default from CPA to cure such ESA Default; provided, (a) if possession of the Project is necessary to cure such non-monetary ESA Default and Collateral Agent has commenced foreclosure proceedings within sixty (60) days after notice of the ESA Default and is diligently pursuing such foreclosure proceedings, Collateral Agent will be allowed a reasonable time, not to exceed one hundred eighty (180) days after the notice of the ESA Default, to complete such proceedings.
proceedings and cure such ESA Default, and (b) if Collateral Agent is prohibited from curing any such ESA Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein for curing a ESA Default shall be extended for the period of such prohibition, so long as Collateral Agent has diligently pursued removal of such process, stay or injunction. Collateral Agent shall provide CPA with reports concerning the status of efforts to cure a ESA Default upon CPA’s reasonable request.

1.4 Substitute Owner.

Subject to Section 1.7, the Parties agree that if Collateral Agent notifies (such notice, a “Financing Document Default Notice”) CPA that an event of default has occurred and is continuing under the Financing Documents (a “Financing Document Event of Default”) then, upon a judicial foreclosure sale, non-judicial foreclosure sale, deed in lieu of foreclosure or other transfer following a Financing Document Event of Default, Collateral Agent (or its designee) shall be substituted for Project Company (the “Substitute Owner”) under the ESA, and, subject to Sections 1.7(b) and 1.7(c) below, CPA and Substitute Owner will recognize each other as counterparties under the ESA and will continue to perform their respective obligations (including those obligations accruing to CPA and the Project Company prior to the existence of the Substitute Owner) under the ESA in favor of each other in accordance with the terms thereof; provided, before CPA is required to recognize the Substitute Owner, the Substitute Owner must be a Permitted Transferee. For purposes of the foregoing, CPA shall be entitled to assume that any such purported exercise of rights by Collateral Agent that results in substitution of a Substitute Owner under the ESA is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same.

1.5 Replacement Agreements.

Subject to Section 1.7, if the ESA is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company, its owner(s) or guarantor(s), and if Collateral Agent or its designee directly or indirectly takes possession of, or title to, the Project (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) (“Replacement Owner”), CPA shall, and Collateral Agent shall cause Replacement Owner to, enter into a new agreement with one another for the balance of the obligations under the ESA remaining to be performed having terms substantially the same as the terms of the ESA with respect to the remaining Contract Term (“Replacement ESA”); provided, before CPA is required to enter into a Replacement ESA, the Replacement Owner must have demonstrated to CPA’s reasonable satisfaction that the Replacement Owner satisfies the requirements of a Permitted Transferee. For purposes of the foregoing, CPA is entitled to assume that any such purported exercise of rights by Collateral Agent that results in a Replacement Owner is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same. Notwithstanding the execution and delivery of a Replacement ESA, to the extent CPA is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the ESA, CPA may suspend performance of its obligations under such Replacement ESA, unless and until all ESA Defaults of Project Company under the ESA or
Replacement ESA have been cured.

1.6 Transfer.

Subject to Section 1.7, a Substitute Owner or a Replacement Owner may assign all of its interest in the Project and the ESA and a Replacement ESA to a natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority or other entity (a “Person”) to which the Project is transferred; provided, the proposed transferee shall have demonstrated to CPA’s reasonable satisfaction that such proposed transferee satisfies the requirements of a Permitted Transferee.

1.7 Assumption of Obligations.

(a) Transferee.

Any transferee under Section 1.6 shall expressly assume in a writing reasonably satisfactory to CPA all of the obligations of Project Company, Substitute Owner or Replacement Owner under the ESA or Replacement ESA, as applicable, including posting and collateral assignment of the ESA Collateral. Upon such assignment and the cure of any outstanding ESA Default, and payment of all other amounts due and payable to CPA in respect of the ESA or such Replacement ESA, the transferor shall be released from any further liability under the ESA or Replacement ESA, as applicable.

(b) Substitute Owner.

Subject to Section 1.7(c), any Substitute Owner pursuant to Section 1.4 shall be required to perform Project Company’s obligations under the ESA, including posting and collateral assignment of the ESA Collateral; provided, the obligations of such Substitute Owner shall be no more than those of Project Company under the ESA.

(c) No Liability.

CPA acknowledges and agrees that neither Collateral Agent nor any Secured Party shall have any liability or obligation under the ESAas a result of this Consent (except to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner) nor shall Collateral Agent or any other Secured Party be obligated or required to (i) perform any of Project Company’s obligations under the ESA, except as provided in Sections 1.7(a) and 1.7(b) and to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner, or (ii) take any action to collect or enforce any claim for payment assigned under the Financing Documents. If Collateral Agent becomes a Substitute Owner pursuant to Section 1.4 or enters into a Replacement ESA, Collateral Agent shall not have any personal liability to CPA under the ESA or Replacement ESA and the sole recourse of CPA in seeking enforcement of such obligations against Collateral Agent shall be to the aggregate interest of the Secured Parties in the Project; provided, such limited recourse shall not limit CPA’s right to seek equitable or injunctive relief against Collateral Agent, or CPA’s rights with respect to any offset rights expressly allowed under the ESA, a Replacement ESA or the ESA Collateral.

1.8 Delivery of Notices.
CPA shall deliver to Collateral Agent, concurrently with the delivery thereof to Project Company, a copy of each notice, request or demand given by CPA to Project Company pursuant to the ESA relating to (a) a ESA Default by Project Company under the ESA, (b) any claim regarding Force Majeure by CPA under the ESA, (c) any notice of dispute under the ESA, (d) any notice of intent to terminate or any termination notice, and (e) any matter that would require the consent of Collateral Agent pursuant to Section 1.11 or any other provision of this Consent. Collateral Agent acknowledges that delivery of such notice, request and demand shall satisfy CPA’s obligation to give Collateral Agent a notice of ESA Default under Section 1.3. Collateral Agent shall deliver to CPA, concurrently with delivery thereof to Project Company, a copy of each notice, request or demand given by Collateral Agent to Project Company pursuant to the Financing Documents relating to a default by Project Company under the Financing Documents.

1.9 Confirmations.

CPA will, as and when reasonably requested by Collateral Agent from time to time, confirm in writing matters relating to the ESA (including the performance of same by Project Company); provided, such confirmation may be limited to matters of which CPA is aware as of the time the confirmation is given and such confirmations shall be without prejudice to any rights of CPA under the ESA as between CPA and Project Company.

1.10 Exclusivity of Dealings.

Except as provided in Sections 1.3, 1.4, 1.8, 1.9 and 2.1, unless and until CPA receives a Financing Document Default Notice, CPA shall deal exclusively with Project Company in connection with the performance of CPA’s obligations under the ESA. From and after such time as CPA receives a Financing Document Default Notice and until a Substitute Owner is substituted for Project Company pursuant to Section 1.4, a Replacement ESA is entered into or the ESA is transferred to a Person to whom the Project is transferred pursuant to Section 1.6, CPA shall, until Collateral Agent confirms to CPA in writing that all obligations under the Financing Documents are no longer outstanding, deal exclusively with Collateral Agent in connection with the performance of CPA’s obligations under the ESA, and CPA may irrevocably rely on instructions provided by Collateral Agent in accordance therewith to the exclusion of those provided by any other Person.

1.11 No Amendments.

To the extent permitted by Laws, CPA agrees that it will not, without the prior written consent of Collateral Agent (not to be unreasonably withheld, delayed or conditioned) (a) enter into any material supplement, restatement, novation, extension, amendment or modification of the ESA (b) terminate or suspend its performance under the ESA (except in accordance with Section 1.3) or (c) consent to or accept any termination or cancellation of the ESA by Project Company.

SECTION 2. PAYMENTS UNDER THE ESA

2.1 Payments.

Unless and until CPA receives written notice to the contrary from Collateral Agent, CPA will make all payments to be made by it to Project Company under or by reason of the ESA directly to Project Company. CPA, Project Company, and Collateral Agent acknowledge that CPA will be deemed
to be in compliance with the payment terms of the ESA to the extent that CPA makes payments in accordance with Collateral Agent’s instructions.

2.2 No Offset, Etc.

All payments required to be made by CPA under the ESA shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the ESA.

SECTION 3. REPRESENTATIONS AND WARRANTIES OF CPA

CPA makes the following representations and warranties as of the date hereof in favor of Collateral Agent:

3.1 Organization.

CPA is a joint powers authority and community choice aggregator duly organized and validly existing under the laws of the state of California, and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. CPA has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the ESA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

3.2 Authorization.

The execution, delivery and performance by CPA of this Consent and the ESA have been duly authorized by all necessary corporate or other action on the part of CPA and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of CPA which, if not obtained, will prevent CPA from performing its obligations hereunder or under the ESA except approvals or consents which have previously been obtained and which are in full force and effect.

3.3 Execution and Delivery; Binding Agreements.

Each of this Consent and the ESA is in full force and effect, have been duly executed and delivered on behalf of CPA by the appropriate officers of CPA, and constitute the legal, valid and binding obligation of CPA, enforceable against CPA in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors’ rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

3.4 No Default or Amendment.

Except as set forth in Schedule A attached hereto: (a) Neither CPA nor, to CPA’s actual knowledge, Project Company, is in default of any of its obligations under the ESA; (b) CPA and, to CPA’s actual knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the ESA; (c) to CPA’s actual knowledge, no event or
condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CPA or Project Company to terminate or suspend its obligations under the ESA; and (d) the ESA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

3.5 **No Previous Assignments.**

CPA has no notice of, and has not consented to, any previous assignment by Project Company of all or any part of its rights under the ESA, except as previously disclosed in writing and consented to by CPA.

**SECTION 4. REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY**

Project Company makes the following representations and warranties as of the date hereof in favor of the Collateral Agent and CPA:

4.1 **Organization.**

Project Company is a [Legal Status of Seller] duly organized and validly existing under the laws of the state of its organization, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or its ability to transact its business. Project Company has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the ESA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

4.2 **Authorization.**

The execution, delivery and performance of this Consent by Project Company, and Project Company’s assignment of its right, title and interest in, to and under the ESA to the Collateral Agent pursuant to the Financing Documents, have been duly authorized by all necessary corporate or other action on the part of Project Company.

4.3 **Execution and Delivery; Binding Agreement.**

Consent is in full force and effect, has been duly executed and delivered on behalf of Project Company by the appropriate officers of Project Company, and constitutes the legal, valid and binding obligation of Project Company, enforceable against Project Company in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors’ rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

4.4 **No Default or Amendment.**

Except as set forth in Schedule B attached hereto: (a) neither Project Company nor, to Project Company’s actual knowledge, CPA, is in default of any of its obligations thereunder; (b) Project
Company and, to Project Company’s actual knowledge, CPA, has complied with all conditions precedent to the effectiveness of its obligations under the ESA; (c) to Project Company’s actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CPA or Project Company to terminate or suspend its obligations under the ESA; and (d) the ESA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

4.5 No Previous Assignments.

Project Company has not previously assigned all or any part of its rights under the ESA.

SECTION 5. REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT

Collateral Agent makes the following representations and warranties as of the date hereof in favor of CPA and Project Company:

5.1 Authorization.

The execution, delivery and performance of this Consent by Collateral Agent have been duly authorized by all necessary corporate or other action on the part of Collateral Agent and Secured Parties.

5.2 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Collateral Agent by the appropriate officers of Collateral Agent, and constitutes the legal, valid and binding obligation of Collateral Agent as Collateral Agent for the Secured Parties, enforceable against Collateral Agent (and the Secured Parties to the extent applicable) in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors’ rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

SECTION 6. MICPALLANEOUS

6.1 Notices.

All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the Party or Parties to whom such notice is addressed, shall refer on their face to the ESA (although failure to so refer shall not render any such notice or communication ineffective), shall be sent by first class mail, by personal delivery or by a nationally recognized courier service, and shall be directed (a) if to CPA or Project Company, in accordance with [Notice Section of the ESA] of the ESA, (b) if to Collateral Agent, to [Collateral Agent Name], [Collateral Agent Address], Attn: [Collateral Agent Contact Information], Telephone: [___], Fax: [___], and (c) to such other address or addressee as any such Party may designate by notice given pursuant hereto.

6.2 Governing Law; Submission to Jurisdiction.

Exhibit S – 8
(a) THIS CONSENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND THIS CONSENT AND ALL MATTERS ARISING OUT OF THIS CONSENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO ANY CONFLICTS OF LAWS PROVISIONS THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.

(b) All disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Consent shall be governed by the dispute resolution provisions of the ESA. Subject to the foregoing, any legal action or proceeding with respect to this Consent and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of California or of the United States of America for the Central District of California, and, by execution and delivery of this Consent, each Party hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Each Party further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to its notice address provided pursuant to Section 6.1 hereof. Each Party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Consent brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall affect the right of any Party to serve process in any other manner permitted by law.

6.3 Headings Descriptive.

The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

6.4 Severability.

In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

6.5 Amendment, Waiver.

Neither this Consent nor any of the terms hereof may (a) be terminated, amended, supplemented or modified, except by an instrument in writing signed by CPA, Project Company and Collateral Agent or (b) waived, except by an instrument in writing signed by the waiving Party.

6.6 Termination.

Each Party’s obligations hereunder are absolute and unconditional, and no Party has any right, and shall have no right, to terminate this Consent or to be released, relieved or discharged from any obligation or liability hereunder until CPA has been notified by Collateral Agent that all of the obligations under the Financing Documents shall have been satisfied in full (other than contingent indemnification obligations) or, with respect to the ESA or any Replacement ESA, its obligations...
under such ESA or Replacement ESA have been fully performed.

6.7 Successors and Assigns.

This Consent shall be binding upon each Party and its successors and assigns permitted under and in accordance with this Consent, and shall inure to the benefit of the other Parties and their respective successors and assignee permitted under and in accordance with this Consent. Each reference to a Person herein shall include such Person’s successors and assigns permitted under and in accordance with this Consent.

6.8 Further Assurances.

CPA hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

6.9 Waiver of Trial by Jury.

TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT OR ANY MATTER ARISING HEREUNDER. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

6.10 Entire Agreement.

This Consent and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Consent and any such agreement, document or instrument, the terms, conditions and provisions of this Consent shall prevail.

6.11 Effective Date.

This Consent shall be deemed effective as of the date upon which the last Party executes this Consent.

6.12 Counterparts; Electronic Signatures.

This Consent may be executed in one or more counterparts, each of which will be deemed to be an original of this Consent and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Consent and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Consent as to the Parties and may be used in lieu of the original Consent for all purposes.
[Remainder of Page Left Intentionally Blank.]
IN WITNESS WHEREOF, the Parties hereto have caused this Consent to be duly executed and delivered by their duly authorized officers on the dates indicated below their respective signatures.

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SCHEDULE A

[Describe any disclosures relevant to representations and warranties made in Section 3.4]
SCHEDULE B

[Describe any disclosures relevant to representations and warranties made in Section 4.4]
EXHIBIT T

CPM Adjustment Factors

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EXHIBIT U

Supply Chain Code of Conduct

Buyer is committed to ensuring that the fundamental human rights of workers are protected, including addressing the potential risks of forced labor, child labor, servitude, human trafficking and slavery across our portfolio.

Our requirements and expectations for Seller’s supply chain are detailed below in our Supply Chain Code of Conduct ("Supply Chain Code"). Seller must comply with all applicable Laws and this Supply Chain Code, even when this Supply Chain Code exceeds the requirements of applicable Law.

These standards are derived from the United Nations Guiding Principles on Business and Human Rights, the Core Conventions of the International Labour Organization ("ILO"), including the ILO Declaration on Fundamental Principles and Rights at Work, the Solar Energy Industries Association Solar Industry Commitment to Environmental & Social Responsibility, and the Responsible Business Alliance Code of Conduct.

1. Freely Chosen Employment
   Forced, bonded (including debt bondage) or indentured labor, involuntary or exploitative prison labor, slavery or trafficking of persons is not permitted. This includes transporting, harboring, recruiting, transferring, or receiving persons by means of threat, force, coercion, abduction or fraud for labor or services. There shall be no unreasonable restrictions on workers’ freedom of movement in the facility in addition to unreasonable restrictions on entering or exiting company provided facilities including, if applicable, workers’ dormitories or living quarters. All work must be voluntary, and workers shall be free to leave work at any time or terminate their employment without penalty if reasonable notice is given as per worker’s contract. Employers, agents, and sub-agents’ may not hold or otherwise destroy, conceal, or confiscate identity or immigration documents, such as government-issued identification, passports, or work permits. Employers can only hold documentation if such holdings are required by law. In this case, at no time should workers be denied access to their documents. Workers shall not be required to pay employers’ agents or sub-agents’ recruitment fees or other related fees for their employment. If any such fees are found to have been paid by workers, such fees shall be repaid to the worker.

2. Young Workers
   Child labor is not to be used in any stage of manufacturing. The term “child” refers to any person under the age of 15, or under the age for completing compulsory education, or under the minimum age for employment in the country, whichever is greatest. Suppliers shall implement an appropriate mechanism to verify the age of workers. The use of legitimate workplace learning programs, which comply with all laws and regulations, is supported. Workers under the age of 18 shall not perform work that is likely to jeopardize their health or safety, including night shifts and overtime. Suppliers shall ensure proper management of student workers through proper maintenance of student records, rigorous due diligence of educational partners, and protection of students’ rights in accordance with applicable laws and regulations. Suppliers shall provide appropriate support and training to all student
workers. In the absence of local law, the wage rate for student workers, interns, and apprentices shall be at least the same wage rate as other entry-level workers performing equal or similar tasks. If child labor is identified, assistance/remediation is provided. Seller has a policy that it does not employ workers under the age of 18.

3. Working Hours
Studies of business practices clearly link worker strain to reduced productivity, increased turnover, and increased injury and illness. Working hours are not to exceed the maximum set by federal and state laws. Further, a workweek should not be more than 60 hours per week, including overtime, all overtime must be voluntary, and workers shall be allowed at least one day off every seven days, in each case, except in emergency or unusual situations.

4. Wages and Benefits
Compensation paid to workers shall comply with all applicable wage laws, including those relating to minimum wages, overtime hours and legally mandated benefits. In compliance with federal and state laws, workers shall be compensated for overtime at pay rates greater than regular hourly rates. Deductions from wages as a disciplinary measure shall not be permitted. For each pay period, workers shall be provided with a timely and understandable wage statement that includes sufficient information to verify accurate compensation for work performed. All use of temporary, dispatch and outsourced labor will be within the limits of the local law.

5. Humane Treatment
There is to be no harsh or inhumane treatment including violence, gender-based violence, sexual harassment, sexual abuse, corporal punishment, mental or physical coercion, bullying, public shaming, or verbal abuse of workers; nor is there to be the threat of any such treatment. Disciplinary policies and procedures in support of these requirements shall be clearly defined and communicated to workers.

6. Non-Discrimination/Non-Harassment
Suppliers should be committed to a workplace free of harassment and unlawful discrimination. Suppliers should not engage in discrimination or harassment based on race, color, age, gender, sexual orientation, gender identity and expression, ethnicity or national origin, disability, pregnancy, religion, political affiliation, union membership, covered veteran status, protected genetic information or marital status in hiring and employment practices such as wages, promotions, rewards, and access to training. Workers shall be provided with reasonable accommodation for religious practices. In addition, workers or potential workers should not be subjected to medical tests that could be used in a discriminatory way or otherwise in violation of applicable law. This was drafted in consideration of ILO Discrimination (Employment and Occupation) Convention (No.111).

7. Freedom of Association
In conformance with local law, Suppliers shall respect the right of all workers to form and join trade unions of their own choosing, to bargain collectively, and to engage in peaceful assembly as well as respect the right of workers to refrain from such activities. Workers and/or their representatives shall be able to openly communicate and share ideas and concerns with management regarding working conditions and management practices.
without fear of discrimination, reprisal, intimidation, or harassment.

8. **Restricted Jurisdictions**
Supplier shall not manufacture or produce products in the Xinjiang Uyghur Autonomous Region of China, or knowingly procure goods and services mined, produced or manufactured in the same.
**EXHIBIT V**

**MATERIAL PERMITS**

<table>
<thead>
<tr>
<th>No.</th>
<th>Permits</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT W

Force Majeure and/or Development Cure Period Claim Form

Instructions

A. Please review Article 10 and Exhibit B (if applicable) of the Power Purchase Agreement prior to filling out the form.

B. Fill out the form completely and return to your assigned Contract Manager at CPA.

__________________________________________________________________________

Seller: [Name]                                               Project: [Name]

Current Guaranteed Construction Start Date: [Date]

New Guaranteed Construction Start Date (if Seller’s claims are validated in full): [Date]

Guaranteed Commercial Operation Date: [Date]

New Guaranteed Commercial Operation Date (if Seller’s claims are validated in full): [Date]

__________________________________________________________________________

1. Please describe the claimed Force Majeure Event or other event giving rise to the claimed Development Cure Period delay(s) (the “Claimed Event”), including its cause, date of commencement and date it ended or is anticipated to end.

2. Please specify the extent of the delay or prevented performance caused by the Claimed Event, including the relief claimed thereby. Describe how the claimed relief was calculated/determined, accounting for individual developments causing such delay or prevented performance.

3. With respect to a Claimed Event other than a Force Majeure Event, please describe the commercially reasonable efforts taken by Seller to prevent such event.

4. Please describe the commercially reasonable efforts taken to mitigate the delays or

Exhibit W - 1
nonperformance caused by the Claimed Event and specify how such efforts reduced the delay days or nonperformance that would otherwise have occurred absent such mitigation.

5. Please attach supporting documentation, including without limitation:

- Force Majeure notices or other correspondence received from suppliers and/or contractors that describe the basis for and extent of the Claimed Event.
- Documentation, contracts, and/or correspondence with suppliers and/or contractors evidencing the claiming Party’s mitigation efforts.
- Project schedule and/or GANTT charts that demonstrate the effect of the Claimed Event on the Guaranteed commercial Operation Date.

By signing this Claim form, I attest and affirm that I am authorized to sign this form on behalf of the Seller, that I have reviewed this Claim, including any attached documentation, and that the facts and statements made in this Claim are true and correct to the best of my knowledge.

Signed: ________________

Name: ________________

Title: ________________

Date: ________________
EXHIBIT X

SELECT BESS SUPPLY AGREEMENT TERMS

**No Forced Labor.** Supplier shall ensure that no equipment or resources used or incorporated into the Products or otherwise supplied to the Project is derived from forced labor or child labor as defined by applicable Laws. Furthermore, notwithstanding Section 2.1 or Article 12, Supplier shall not be excused from delays in the performance of its Work or additional costs suffered as a result of complying with any Laws of the United States applicable to the use of forced labor or child labor, enacted or implemented at any time, including any restrictions on the importation of equipment into the United States under such Laws.

**Sourcing Locations.** Supplier shall ensure that the Products (including any equipment or resources used or incorporated into such Products) identified in the table below shall be sourced exclusively from the corresponding location(s), respectively, shown below:

<table>
<thead>
<tr>
<th>Product Category</th>
<th>Location of Production</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cabinet body</td>
<td>Jiangsu, Guangdong province (China)</td>
</tr>
<tr>
<td>HVAC</td>
<td>Beijing, Jiangsu, Guangdong (China)</td>
</tr>
<tr>
<td>Plate/sheet</td>
<td>Guangdong province (China)</td>
</tr>
<tr>
<td>Transformer</td>
<td>Guangdong, Anhui province (China)</td>
</tr>
<tr>
<td>PCBA</td>
<td>Guangdong province (China)</td>
</tr>
<tr>
<td>Cable/wire</td>
<td>Guangdong, Jiangsu province (China)</td>
</tr>
<tr>
<td>Electronic device</td>
<td>USA, Japan, Malaysia, China (Shanghai, Guangdong, Fujian province)</td>
</tr>
<tr>
<td>Electrical components</td>
<td>France, Germany, India, Japan, China (Taiwan, Fujian province, Guangdong province, Anhui province)</td>
</tr>
<tr>
<td>Other</td>
<td>USA, France, Germany, India, Japan, Malaysia, China (Jiangsu, Taiwan, Guangdong, Beijing, Anhui, Fujian province)</td>
</tr>
</tbody>
</table>

“Laws” means all laws, statutes, treaties, ordinances, codes, judgments, decrees, directives, guidelines, policies, injunctions, writs, orders (including the Bulk Power System Order), rules, regulations, interpretations, licenses, permits and other approvals with, from or of any Governmental Authority having jurisdiction over the Products, the Project Site, the Delivery Point, the Project and this Agreement and each other document, instrument and agreement delivered hereunder or in connection herewith, including those relating to health, safety, the environment, forced labor, slavery and child labor (including the United Kingdom’s Modern Slavery Act of 2015) in each case as the same may be enacted, implemented, modified, amended or repealed from time to time.
To: Board of Directors

From: Joanne O’Neill, Director, Customer Programs

Approved by: Ted Bardacke, Chief Executive Officer

Subject: Workforce Development Phase 2 Funding Allocations

Date: July 6, 2023

RECOMMEND

Approve Recommended Workforce Development Phase 2 Funding Allocations as follows:

<table>
<thead>
<tr>
<th>Program/Partner</th>
<th>Funding</th>
</tr>
</thead>
<tbody>
<tr>
<td>LACI: Project Management Training Course</td>
<td>$100,000</td>
</tr>
<tr>
<td>VCEJATC: Energy Storage Trainer</td>
<td>$11,490</td>
</tr>
<tr>
<td>LAETI: Energy Storage Trainers</td>
<td>$37,840</td>
</tr>
<tr>
<td>Voyager Scholarships</td>
<td>$105,000</td>
</tr>
<tr>
<td>Recommended Phase 2 Total</td>
<td>$254,330</td>
</tr>
</tbody>
</table>

ATTACHMENT

1. Presentation on Workforce Development
Item 9
Workforce Development
Phase 2 Funding
Action Requested:

Approve Workforce Development Phase 2 Funding Allocations
Agenda

- Background
- Review Phase 1 funding recipients and outcomes
- Recommendations for Phase 2 funding
Current Workforce Funding Sources

Voyager Wind PPA (Terra-Gen)
- In 2019 the Board approved the Voyager PPA which included $150,000 contribution from the developer to be distributed in scholarships over four years
- $1,000 scholarships for students provided to 7 community colleges with workforce development, renewable energy, engineering and environmental pathways programs

White Hills Wind PPA (NextEra)
- In 2019 the Board approved the PPA which included $1 million contribution from the developer for local workforce development activities over four years
- First round of funding released in 2022 to 3 organizations
CPA’s Workforce Development Efforts

In 2019, the Board approved the Voyager Wind PPA which created the fund for the Voyager Scholarship program for target Community Colleges
  - The Community Advisory Committee (CAC) collaborated with CPA staff to develop and establish a framework for scholarship distribution
In December 2020, the Board directed staff to seek out program investments using funding from the White Hills Wind PPA that:
  - “Green” existing jobs by providing training and resources that will give workers skills necessary to facilitate building and transportation electrification
  - Support union apprenticeship programs, clean energy rapid trainings, and certificate programs for both union and non-union pathways
In November 2021, the Board approved Phase 1 of Clean Energy Workforce Development Investment Plan to direct the funding from the White Hills Wind PPA
### Phase 1 Funding Outcomes

<table>
<thead>
<tr>
<th>Funding Partner</th>
<th>Funding</th>
<th>Subject</th>
<th>Status</th>
<th>Expected Outcomes</th>
<th>Outcomes To Date</th>
</tr>
</thead>
</table>
| Los Angeles Cleantech Incubator (LACI)                              | $50,000  | Microgrid Maintenance Training                            | Complete                | • 40 participants  
• 30 graduates  
• 20 internships                                                                | • 35 participants  
• 26 graduates  
• 15 internships                                                                |
| Ventura County Electrical Joint Apprenticeship Training Committee   | $123,000 | Cybersecurity Apprenticeship Training for Smart Buildings and Smart Cities | Training ongoing with CPA-funded equipment | • 3-5 year equipment service life  
• 71+ apprentices                                                              | • Training in process |
| Los Angeles Electrical Training Institute (LAETI)                   | $225,500 | Cybersecurity Apprenticeship Training for Smart Buildings and Smart Cities | Training ongoing with CPA-funded equipment | • 3-5 year equipment service life  
• 129+ apprentices                                                              | • Training in process |
| Community Colleges in Los Angeles and Ventura Counties              | $150,000 | $1,000 Scholarships to students in community colleges (started in 2019) | 47% of scholarships distributed | • 150 scholarships                                                                | • 70 distributed  
• 80 to be distributed in 2023 and 2024 |
| **Total**                                                           | **$548,500** |                                                   |                         |                                                                                 |                                               |
Outcomes: LACI Training & Students

Brenda Medina-Maldonado worked for Sustainable Works where she assisted with educating students on environmental policies and data. After completing LACI’s Microgrid Maintenance Fellowship, Brenda was hired by Dream.Org as their Community Partnerships Associate where she is able to expand her community work and educate local organizations on the benefits of microgrid units, clean energy, and sustainability.

Shanequa Campbell has years of experience with solar energy, construction, and carpentry which contributed to her success as a Project Manager for her group presentation during the Technical Bootcamp. Since completing the Microgrid Maintenance Fellowship, Shanequa has been hired by Power Electronics as a Solar Field Technician where she hopes to bring her work and educational experience to her home country of Jamaica.
Outcomes: ETI Classroom Materials

- Funding includes support for 17 electrical training boards
- Provide hands-on learning for 200+ apprentices over 3 years
Outcome: Voyager Scholarship Recipients

Connie Ortiz

"As a disabled veteran, single mom of four kids, any little bit helps. Thank you, thank you, thank you. This will help me pursue my career as an electrician."

Melissa Mejia

"... thanks to the generosity of donors like yourselves, I have been put in a position to inspire not only my younger siblings, but those in my community ... to know that anything is truly possible of they set their minds to it."
Phase 2 Funding Recommendations
Phase 2 Funding Approach

Goals:

- Continue to invest in workforce development and skills training under the Board’s framework of “greening” existing jobs via apprenticeship programs, rapid trainings, and certificate programs.
- Strengthen partnerships with entities that have demonstrated success, while pursuing additional local support opportunities.

Met with existing partners to understand opportunities and needs of their organizations

Performed outreach to additional organizations and potential partners

Prioritized funding based on fit with Board & CPA goals

Reviewed Board approach and funding recommendations with CAC
Los Angeles Cleantech Incubator (LACI)

**Project Management Training Course**: Participants will gain skills to manage EV charger maintenance projects
- Entry-level training, internships afterward
- Covers general EV charging topics, terminology
- Pipeline for startups and electrical contractors to manage EV infrastructure projects
- 30 participant cohort
- Stipends for participating in course and for internships

**Benefits**
- LACI has a Jobs Pipeline Manager to assist with finding jobs and internships
- Ability for CPA to influence curriculum
- Curriculum development will support future cohorts

<table>
<thead>
<tr>
<th><strong>LACI Funding Breakout</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Tasks</strong></td>
<td><strong>Cost</strong></td>
</tr>
<tr>
<td>Trainer Contractor</td>
<td>$50,000</td>
</tr>
<tr>
<td>Participant/Intern Stipends</td>
<td>$50,000</td>
</tr>
</tbody>
</table>

**How CPA Funding Will Be Used**
- CPA funding will cover 100% of Technical Bootcamp Trainer costs
- CPA will cover roughly 50% of stipend needs for Project Management Training Course participants
  - Approx. $1,667 per student
IBEW - Ventura County and Los Angeles County Electrical Training Institutes (ETIs)

Microgrid Training Programs: Energy Storage & Microgrid & Certification programs (ESAMTAC). An advanced 5th-year IBEW apprenticeship curriculum developed by UC Davis Proto Gen Inc. Taught by VCEJATC and LAETI.

- Proposed funding for Energy Storage Trainers: classroom equipment for apprentices to practice wiring battery systems
- Alleviates logjams for time on few existing storage trainers
- Currently 3-4 students can work at each station at a time
- Requested by both ETIs

Lower Phase 2 Funding

- The grand total of Phase 2 funding is $49,330 - smaller amount than previous funding. It recognizes the ETI's good work, but also deployment challenges over the last year.
- Only one Energy Storage Trainer set requested by VCEJATC

### Phase 2 Energy Storage Trainer Costs

<table>
<thead>
<tr>
<th>Material Type</th>
<th>Cost per Unit</th>
<th>VCEJATC Units</th>
<th>LAETI Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trojan System Lab Kit</td>
<td>$5,090</td>
<td>1</td>
<td>6</td>
</tr>
<tr>
<td>Charging Station</td>
<td>$900</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Wet Cell Pack</td>
<td>$5,500</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$11,490</strong></td>
<td><strong>$37,840</strong></td>
<td></td>
</tr>
</tbody>
</table>
**Voyager Scholarships**

**Voyager Scholarships:** CPA will distribute scholarship funding to current seven community colleges in CPA’s service territory with workforce development, renewable energy, engineering and environmental pathways programs

- Prepares students for jobs in green economy
  - Graduates of community college or trade school can outearn peers who attend 4-year university ([LA Times: The Most Lucrative Majors?](#))
- $105,000 for 105 scholarships
  - Approximately 1/3 to Ventura, 2/3 to LA County
- CPA to investigate expanding program to other community colleges pending Phase 2 outcomes

### Shift in Funding

- Phase 1 funded by Voyager Wind PPA
- Phase 2 will utilize Mohave wind PPA funding

<table>
<thead>
<tr>
<th>Community Colleges</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antelope Valley College</td>
</tr>
<tr>
<td>Rio Hondo College</td>
</tr>
<tr>
<td>Oxnard College</td>
</tr>
<tr>
<td>East Los Angeles College</td>
</tr>
<tr>
<td>Ventura College</td>
</tr>
<tr>
<td>Moorpark College</td>
</tr>
<tr>
<td>Compton College</td>
</tr>
</tbody>
</table>
## Phase 2 Funding Proposal Summary

<table>
<thead>
<tr>
<th>Program/Partner</th>
<th>Description</th>
<th>Funding</th>
<th>Funding Breakout</th>
<th>Expected Outcomes</th>
<th>Start Date</th>
</tr>
</thead>
</table>
| **LACI: Project Management Training Course** | • Skills to manage EVSE maintenance  
• Workers transitioning from oil and gas industry encouraged to apply | $100,000 | Training Contractor: $50,000  
Stipends: $50,000 | • 30 participants  
• Placement in internships | Oct 2 – Nov 9, 2023 |
| **VCEJATC: Energy Storage Trainer** | • Funding to purchase one Energy Storage Trainer for classroom learning on battery systems  
• Advanced course for 5<sup>th</sup> year apprentices | $11,490  | 1 Trojan System Lab kit  
1 charging station  
1 wet cell pack | • 5-year service life  
• 89 apprentices | December 2023 |
| **LAETI: Energy Storage Trainers** | • Funding to purchase multiple Energy Storage Trainers for classroom learning on battery systems  
• Advanced course for 5<sup>th</sup> year apprentices | $37,840  | 6 Trojan System Lab kits  
2 charging stations  
1 wet cell pack | • 5-year service life  
• 200+ apprentices | December 2023 |
| **Voyager Scholarships** | • Funding to support students at seven community colleges in LA and Ventura  
• Financial aid for scholars in energy-focused careers | $105,000 | $1,000/scholarship | • 105 scholarships | Fall/ Spring 2023/ 2024 |

**Proposed Phase 2 Total** $254,330  
**Remaining Funding** $347,170  

**Additional Opportunities:** CPA is exploring additional new partnership opportunities in Ventura County for a Phase 2b
Next Steps

- Approve Phase 2 Funding Allocations
- CPA will execute MOUs with recipients (funding levels within CEO signing authority)
- MOUs will include metrics and tracking mechanisms to evaluate success
- Seek out additional Ventura County opportunities for Phase 2b
Action Requested:

Approve Workforce Development Phase 2 Funding Allocations
To: Board of Directors

From: Joanne O’Neill, Director, Customer Programs

Approved by: Ted Bardacke, Chief Executive Officer

Subject: Local Programs Action Plan

Date: July 6, 2023

Staff will provide a presentation on the item.

ATTACHMENTS

1. Presentation
2. Local Programs Action Plan
Agenda – Information Item Only

- Mid-cycle review process background
- Local Programs for a Clean Energy Future Action Plan
- Next steps
- Questions
Mid-Cycle Review Process

Background
Local Programs for a Clean Energy Future

Board adopted in 2020, the Plan sets a 5-year vision for programs, focused on 3 pillars:

- Resilience & Grid Management
- Building & Transportation Electrification
- Local Procurement
Why a mid-cycle update is valuable:

- Plan was published in 2020 setting a 5-year vision for programs, focused on 3 pillars
- CPA’s resources have expanded allowing additional investment in programs
- Changes to the policy and technology landscape offer opportunity to evaluate and grow priority programs
- Evaluate opportunities to leverage state and federal funding to expand programs and for CPA to serve as a platform to help customers access these new funding sources
Mid-Cycle Approach

Build upon existing Plan through creation of separate “Action Plans” that expand and refine approaches under each Program Pillar

Action Plans:
• Articulate any course adjustments
• Define new or changing programmatic approaches within existing pillars
• Provide high level implementation strategies through 2025
Key Stakeholders

Internal CPA
- Marketing & Communications
- Government Affairs
- Regulatory Affairs
- Strategic Accounts
- Customer Care & Data Systems
- Rates & Strategy
- Power Supply
- Finance
- People & Culture

Community
- Community Advisory Committee
- Community Based Organizations
- Customers (through Strategic Accounts & customer research)
- Load analysis of customer usage to identify scale of opportunities

CPA Member Agencies
- City Managers and City Staff (Member Agency Programs)
- Executive Committee
- Board of Directors
Action Plan Overview
Action Plan Purpose

- Action Plan is a supplementary document to the Local Programs for a Clean Energy Future plan.
- Focuses on new programmatic areas of pursuit, existing plan priorities will continue and/or evolve.
- Follows existing strategic approach of offering programs that are incremental or address gaps in programs already available to CPA customers from others (i.e., SCE).
- Does not alter current program offerings that are on-going, although highlights key areas for improvements.
## Cross Cutting Program

<table>
<thead>
<tr>
<th>Implementation Phase</th>
<th>Program</th>
<th>Target Audience</th>
<th>Timeline</th>
<th>Included in '23-24 Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Program</td>
<td>Local Government Sustainability Assistance Program: Menu</td>
<td>Member agencies</td>
<td>Begin recruitment Q1 2024</td>
<td>Incentives and technical assistance</td>
</tr>
<tr>
<td></td>
<td>Local Government Sustainability Assistance Program: Grants</td>
<td>Member agencies</td>
<td>Issue first funding opportunity Q1/Q2 2024</td>
<td>Incentives and technical assistance</td>
</tr>
</tbody>
</table>
# Resilience & Grid Management

<table>
<thead>
<tr>
<th>Implementation Phase</th>
<th>Program</th>
<th>Target Audience</th>
<th>Timeline</th>
<th>Included in '23-24 Budget</th>
</tr>
</thead>
</table>
| **Program Continuation** | Power Ready (cohort 1)  
*No cost clean energy back-up systems for critical facilities* | Member agencies  
11 sites | On-going | Technical assistance (project funding part of power supply costs) |
| | Power Response  
*Automated and behavioral demand response program* | Residential, commercial, and public  
1,210 participants & 1.38 MW enrolled | On-going | Incentives and technical assistance |
| **Expansion / Improvement** | Power Ready Program (cohort 2) | Municipal and community buildings | Begin recruiting cohort 2 in late 2023 | Technical assistance |
| | Adjust/redesign current rate-based approach to incentivize large customers to reduce usage during market or grid events | Commercial and public | New approach ready for launch by summer 2025 | No |
## Electrification

<table>
<thead>
<tr>
<th>Implementation Phase</th>
<th>Program</th>
<th>Target Audience</th>
<th>Timeline</th>
<th>Included in '23-24 Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Program Continuation</td>
<td>EV Charger Rebates – CalEVIP (applications close 7/31/23)</td>
<td>Multifamily, commercial, and public 60 connectors complete / 653 reserved</td>
<td>On-going</td>
<td>Incentives</td>
</tr>
<tr>
<td></td>
<td>Reach Code Program for Building and Transportation Electrification Technical and stakeholder engagement support</td>
<td>Member agencies Program launch underway</td>
<td>On-going</td>
<td>Incentives and technical assistance</td>
</tr>
<tr>
<td></td>
<td>Workforce training &amp; development Training, equipment &amp; scholarships</td>
<td>CPA territory residents 130 students to-date</td>
<td>Phase 2 launch late 2023</td>
<td>Training funding and participant stipends</td>
</tr>
<tr>
<td>New Program</td>
<td>Customer Energy Advisor</td>
<td>Residential and small commercial</td>
<td>RFP in early 2024</td>
<td>Technical assistance</td>
</tr>
<tr>
<td></td>
<td>EV charging infrastructure technical assistance &amp; incentives</td>
<td>Multifamily and small to medium businesses in DACs</td>
<td>RFP in early 2024</td>
<td>Incentives and technical assistance</td>
</tr>
<tr>
<td>Implementation Phase</td>
<td>Program</td>
<td>Target Audience</td>
<td>Timeline</td>
<td>Included in ‘23-24 Budget</td>
</tr>
<tr>
<td>---------------------</td>
<td>----------------------------------------------</td>
<td>----------------------------------------------</td>
<td>---------------------------------</td>
<td>------------------------------------------</td>
</tr>
<tr>
<td>Program Continuation</td>
<td>Power Share (DAC-GT)</td>
<td>Residential</td>
<td>On-going</td>
<td>CPUC funded</td>
</tr>
<tr>
<td></td>
<td>20% bill discounts for 100% clean &amp; local solar in DACs</td>
<td>6 projects contracted 5,970 customers</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Community Solar (CSGT)</td>
<td>Residential</td>
<td>On-going</td>
<td>CPUC funded</td>
</tr>
<tr>
<td></td>
<td>20% bill discounts for 100% clean &amp; local solar</td>
<td>2 projects contracted Enrollment to start ?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>New Program</td>
<td>Incentives to support solar + storage adoption</td>
<td>Residential</td>
<td>Phase 1 Jan 2024 / Phase 2 RFP in Q1 2024</td>
<td>Incentives (P1) Technical assistance (P2)</td>
</tr>
<tr>
<td></td>
<td>Pursue partnership to deliver virtual power plant (VPP)</td>
<td>Residential</td>
<td>Prepare RFO in 2024</td>
<td>Technical assistance</td>
</tr>
</tbody>
</table>
Next Steps
Next Steps

1. Issue RFPs for vendors to support program delivery
2. Launch new programs
3. Begin process for development of next 5-year plan in 2024
Questions
Local Programs for a Clean Energy Future Action Plan

2023-2025
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   Customer Composition 6

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   2. Rate-Based Approach to Incentivize Customers to Reduce Usage During Events 9

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   5. Incentives to Support Solar + Storage Adoption 12
   6. Pursue Partnership to Deliver Virtual Power Plant 13

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Local Programs for a Clean Energy Future

Background

The Clean Power Alliance Board of Directors approved the Local Programs for a Clean Energy Future Plan (Plan) in June of 2020. This Plan charts a strategic vision for customer programs, including products, services, and financial incentives, undertaken by CPA to invest in its communities and to support its customers in co-managing their relationship with the energy system. These programs can bring local benefits such as customer cost savings, economic and workforce development, improved air quality and public health, and more resilient communities.

The Plan identified seven programs that fall into three categories: Resilience and Grid Management, Electrification, and Local Procurement. These three categories are also referred to as CPA’s “Program Pillars”. All of these programs have been launched and are in various stages of implementation.
Resilience and Grid Management

1. **Clean Back Up for Essential Facilities:** Installation of clean energy generation and storage at essential community facilities. This program is called Power Ready.

2. **Demand Response:** Partnering with customers to utilize demand response, reliability, and/or resiliency. This program is called Power Response.

3. **Peak Management Pricing:** Incentives for commercial and public agency customers to reduce their energy consumption during periods of grid stress, elevated wholesale energy prices, and high greenhouse gas (GHG) emissions.

Electrification

4. **Public Electric Vehicle (EV) Charging:** Incentives for publicly accessible electric vehicle chargers. CPA currently offers EV charging incentives in partnership with California Energy Commission through the California Electric Vehicle Infrastructure Project (CALeVIP).

5. **Building Electrification Codes:** Technical assistance and incentives for cities and counties to develop local building codes to encourage the electrification and decarbonization of the building sector.

Local Procurement

6. **Community Solar:** Development of small-scale local generation projects in disadvantaged communities (DAC) that provide bill discounts of 20% to neighboring residents.

7. **100% Green Discount:** Bill discount of 20% to low-income customers for renewable energy generated in disadvantaged communities. This program is called Power Share.

In addition to these seven programs, CPA also launched a **Workforce Development Program** that has provided a Microgrid Maintenance training program through the Los Angeles Cleantech Incubator, and funding for two upcoming Western Electrical Cybersecurity Apprenticeship Trainings for Smart Buildings & Smart Cities through the Los Angeles Electrical Training Institute and the Ventura County Joint Apprenticeship Training Committee, both managed by the International Brotherhood of Electrical Workers (IBEW).
Mid-Cycle Plan Refresh

As the Plan laid out a 5-year vision for customer programs, this current mid-point mark has served as an opportunity to perform a mid-term review. In addition to being at the mid-point of the Plan timeline, there have also been changes to the policy and technology landscape that offer an opportunity to evaluate and grow our priority programs.

This review does not change the existing Plan, built through over a year of research, development, and outreach, but rather builds upon the Plan through the creation of a separate “Action Plan” that expands and refines the approaches for the next several years under the existing Program Pillars. Additionally, given the evolving nature of the market this Action Plan expands the Plan to include “Cross Cutting Programs” that address a combination of Program Pillars to deliver benefits to our customers and communities.

During the mid-cycle review, CPA considered the performance of its existing programs and past pilots to inform areas to continue, expand, or add. This process also included evaluation of external funding opportunities. CPA is tracking regional, state, and federal funding opportunities that align with its Program Pillars. As discussed in the individual sections of the Action Plan, CPA will pursue, either independently or with local partners, external funding opportunities that align with these program priorities and will serve to accelerate or expand the reach of its programs.

Stakeholder Engagement

To create the Action Plan, CPA solicited feedback from internal stakeholders, City Managers and Sustainability Staff, Community Based Organizations (CBOs), the Community Advisory Committee, and its Board of Directors. It also incorporated customer input through customer surveys, load profile analysis, and input from the Strategic Accounts team within CPA. Finally, the Action Plan was informed by benchmarking and evaluating best practices from other CCAs, program administrators, and organizations across California and the nation.

Program Prioritization

During the mid-cycle refresh process many programmatic ideas and solutions were identified and considered. Of these ideas, CPA staff selected seven concepts that they felt best continued to advance the priorities established in the original Plan. These were selected based on a qualitative assessment to prioritize the top ideas and ultimately develop the recommendations in the Action Plan below. The criteria used are as follows:

- Program impacts measured in kWh, kW, GHG, or customer cost savings and the anticipated total cost to administer.
• Goal alignment with the CPA mission and Local Programs for a Clean Energy Future plan.

• Whether the offer expands access and engagement throughout our customer base, particularly underserved communities.

• Differentiated value, i.e. whether it brings unique value versus what others are offering in the region.

Customer Centric Design

CPA’s service territory has a unique diversity of customers, communities, and climate zones which are important to consider when designing programs and outreach approaches. Part of CPA’s evaluation in developing this Action Plan included consideration for the customer composition within its service territory to ensure it focuses resources to provide the most value to CPA customers. Additionally, CPA evaluated where there were gaps in state or regional program offerings or where existing programs did not fully address the barriers to adoption by CPA customers.

CPA serves approximately 1 million residential and business customer accounts across 32 communities in Los Angeles and Ventura counties, with three more cities starting service in 2024. The majority, 88%, of CPA customers are residential, with 20% of those residential customers receiving California Alternative Rates for Energy (CARE) and/or Family Electric Rate Assistance (FERA). CPA focused specifically on equity and ensuring traditionally hard-to-reach and low-income customers are a target audience for CPA programs. As a result, many programs discussed in the Action Plan are designed to specifically target residential customers and those on CARE or FERA. Additionally, focusing on local governments was seen as an opportunity to amplify local leadership and to serve the broader community.
Local Programs for a Clean Energy Future

ACTION PLANS

2023-2025
In addition to continuing and improving upon existing offerings, such as Power Response and the first cohort of projects under Power Ready, CPA plans to expand its resilience and grid management efforts. These new program approaches take into account best practices and respond to changes and trends in the energy market.

1. Expand Power Ready Program

OBJECTIVE

Provide clean energy resiliency to municipal and community sites that serve a critical need in order to preserve those critical functions during an outage and by offering an alternative to diesel generators, reducing emissions and improving local air quality.

APPROACH

Develop an additional cohort of participants to broaden the reach of the program. CPA will also seek external funding to expand the number of Power Ready sites and increase the community resiliency benefits the program can provide. There is an increased focus on funding resiliency projects from both federal and state funding sources that align with CPA’s Power Ready program approach. CPA will track and apply for this funding to support expansion of the program to include other existing community-serving locations such as schools, libraries, community centers, youth and/or senior centers, cultural centers, workforce development and training facilities, and foodbanks. CPA will work with participants to engage their communities during the projects to maximize the resiliency benefits.

TIMELINE

Recruitment for the next cohort to expand the Power Ready program is targeted and budgeted for in the 2023-2024 fiscal year.
2. Rate-Based Approach to Incentivize Customers to Reduce Usage During Energy Savings Events

OBJECTIVE

Leverage customer load shifting as an emergency grid resource during periods where energy costs are high or there is strain on the grid due to high demand. Customers who are able to significantly shift load and provide this resource will benefit from incentives or lower prices the rest of the year.

APPROACH

Evaluate the current Peak Management Pricing rate and program structure, including why there is low enrollment, and propose a redesigned approach to increase customer participation. The redesigned rate or alternative approach will provide price signals to large commercial and public sector customers to drive shifts in their behavior. This could include incentives, increased or decreased rates during certain periods, real-time or dynamic pricing signals, and feedback to deliver the desired results. This will consider how a CPA rate or approach would be distinct from any rates available to customers through SCE.

TARGET AUDIENCE

This program would be available to commercial and public sector customers.

TIMELINE

Evaluation of new and alternative approaches will begin in 2024 with a goal to launch any new product prior to summer 2025.
Electrification

CPA will continue to administer its Reach Code Program for Building and Transportation Electrification and the CALeVIP Southern California and South Central Coast Incentive Projects in partnership with the California Energy Commission. The CALeVIP offering is in the process of ramping down, with final project completions due in early 2025. CPA will also continue to partner with local workforce training and development agencies to build a workforce to support these types of activities. Given the growing importance and opportunities around electrification, CPA will expand its offering to address key barriers to adoptions amongst its customers.

3. Customer Energy Advisor

**OBJECTIVE**

Provide a concierge service to our customers to enable them to advance energy efficiency and electrification projects with less confusion and effort, maximizing their ability to leverage regional, state, and federal funding opportunities.

**APPROACH**

Electrifying and increasing the efficiency of existing buildings can be challenging to navigate for customers. The Customer Energy Advisor would serve as a neutral third party to assist customers in identifying the right types of measures to pursue, referring qualified contractors, reviewing bids, and connecting the customer with financing and incentives offered through numerous local and statewide programs. CPA may also include additional customer incentives to offset the costs of electrification measures or infrastructure, such as electrical panel upgrades.

**TIMELINE**

This program has been budgeted in the 2023-2024 fiscal year budget. Staff anticipate designing and administering a Request for Proposal (RFP) for implementation services in early 2024. Additional customer incentives have not yet been budgeted.

**TARGET AUDIENCE**

This service would be available for residential and small business customers.
4. EV Charging Infrastructure Technical Assistance and Incentives for Hard-to-Reach Customers

**OBJECTIVE**

Increase availability of EV charging infrastructure to traditionally hard-to-reach customer segments by alleviating key barriers such as technical knowledge, expertise, and funding. Increasing the availability of EV charging in multifamily dwellings and within disadvantaged communities will enable broader adoption of electric vehicles.

**APPROACH**

This program would provide technical assistance to multifamily building owners, and to owners of small and medium business in disadvantaged communities. The technical assistance would evaluate the feasibility of on-site EV charging and provide recommendations on the preferred configurations to minimize electric infrastructure upgrades. This would include connecting customers with installers, available funding, and financing to enable the project. The program will also consider offering incentives or direct installation of chargers for these customers to help offset the cost of EV infrastructure. CPA will pursue Low Carbon Fuel Standard (LCFS) credits to fund incentives for this customer segment to complement the technical assistance services. Additionally, there would be a focus on enrolling these participants in Power Response or other time-of-use optimization approaches.

**TIMELINE**

This program has been budgeted in the 2023-2024 fiscal year budget. CPA plans to leverage LCFS credits as an additional funding source to support incentives. Staff anticipate designing and administering a RFP for implementation services in early 2024.

**TARGET AUDIENCE**

This program will target multifamily properties across CPA’s service territory as well as small and medium businesses within disadvantaged communities.
Local Procurement

Enabling behind-the-meter and front-of-the-meter local energy projects is critical to advancing our clean energy goals. CPA will continue to offer the California Public Utilities Commission (CPUC) funded Disadvantage Communities Green Tariff (DAC-GT) and Community Solar Community Solar Green Tariff (CSGT) offering. These programs provide residential customers with 100% clean energy and an additional 20% bill discount for eligible residents. CPA will continue to advocate for community solar program expansion at the CPUC to increase the number of customers it serves. CPA will continue to expand its programs in this category, with a focus on expanding behind-the-meter offerings that empower customers to adopt solar and storage technologies.

5. Incentives to Support Solar + Storage Adoption

OBJECTIVE

Provide a simple pathway to encourage new and existing solar customers to pair their systems with battery storage. This will provide customers with bill savings under new net energy metering (NEM) tariffs and provide the region with increased grid resources.

APPROACH

CPA will evaluate the best approach to increase behind-the-meter solar and storage, or stand-alone storage that can be utilized as a grid management and emergency response assets. This program is designed to work in conjunction with the new NEM tariff to advance storage paired solar systems by providing an upfront incentive for the purchase and installation of battery storage (phase 1). Additionally, CPA will evaluate how to increase adoption of battery storage with low income and medical baseline customers (phase 2). Phase 2 may include direct installation opportunities that could leverage private capital or partnerships to improve the value proposition. Additionally, CPA will evaluate financing opportunities for customers to offset the cost of the battery and to incentivize customers to enroll in demand response (DR) programs and/or allow management of a portion of their battery as a grid resource.

TIMELINE

Staff anticipate designing and launching in two phases, the first of which will be available by early 2024 and the second stage which will include an RFP in early 2024. Phase 1 of this program has been budgeted in the 2023-2024 fiscal year budget.

TARGET AUDIENCE

This program will focus primarily on residential customers but will also explore how to best serve residential customers in multifamily buildings and commercial customers in the future.
6. Pursue Partnership to Deliver Virtual Power Plant

**OBJECTIVE**

Leverage behind-the-meter resources for demand reduction during grid emergencies and/or to allow for ongoing grid management in support of CPA’s power procurement efforts. By tapping into the market to identify, procure, and manage these potential resources, CPA can create a virtual power plant that would be leveraged during grid strain which would concurrently support customers to adopt clean energy technologies and strengthen their ability to manage and control their energy usage.

**APPROACH**

CPA will evaluate the best approach to procuring distributed energy resources through a Request for Offer (RFO) process that can be deployed to manage peak usage and high-priced hours and can improve reliability and deliver cost savings. There are numerous manufacturers, installers, and service providers that have existing, or the ability to quickly build, networks of customer resources that can be deployed to meet these needs. This would operate in parallel to the Power Response program but could offer access to resources beyond what that program is built to deliver.

This program pathway also aligns with numerous potential funding sources, such as emergency reliability statewide funding that could accelerate or amplify CPA’s efforts.

**TIMELINE**

CPA has budgeted support from a technical consultant to provide recommendations on its approach in the 2023-2024 budget, with a goal to launch a solicitation in 2024.

**TARGET AUDIENCE**

This offer will target aggregators of behind-the-meter resources sited at CPA customer locations.
Cross Cutting Programs

New as part of this Action Plan, Cross Cutting Programs would focus on areas that cross over between multiple Program Pillars. These efforts, by design, allow for focus in resilience and grid management, building and transportation electrification, and local procurement and strive to encourage adoption of projects and technologies that accomplish multiple goals.

7. Local Government Sustainability Assistance Program

OBJECTIVE

Accelerate adoption of member agencies’ sustainability and climate goals through technical assistance and financial support. CPA will streamline this support by procuring technical resources and incentivizing equipment to advance key areas that align with its Program Pillars. This program will also provide support for local governments to pursue other regional, state, and federal funding to complement CPA funds and maximize the opportunities.

APPROACH

The program combines two optional participation pathways. First, a menu of scalable options, such as municipal fleet electrification, building electrification, and EV charging at city or county sites, which would be available to each member agency. Second, a grant opportunity for unique projects related to resilience and grid management, electrification, and/or local procurement. CPA will also support member agencies in understanding and obtaining funding from other local, state, and federal funding opportunities. A program of this type was contemplated in the current Plan but was not initially selected due to financial and administrative constraints.

TARGET AUDIENCE

This program will be available to CPA member agencies for implementation in their facilities and operations.

TIMELINE

This program is under development with a target launch in early 2024 and has been budgeted in the 2023-2024 fiscal year budget.
Resource Adequacy Compliance and Potential CPA Expansion

Recent CPA procurement activities and a June 29 decision by the California Public Utilities Commission (CPUC) have the potential to impact future expansion of CPA’s service territory to other communities – beyond the three cities where CPA will expand in 2024.

Currently three cities – La Canada Flintridge, Lynwood, and Port Hueneme – have expressed formal interest in joining CPA by the end of 2023, with service starting as early as 2025. And in an effort to show “zero tolerance” for Resource Adequacy non-compliance by CCAs, the CPUC has decided that CCAs who are deficient in Resource Adequacy compliance filings beginning with September 2023 will be barred from filing expansion plans for two calendar years following any Resource Adequacy compliance deficiencies.

Through the dedicated efforts of CPA’s procurement team, CPA has a very high likelihood of meeting its Resource Adequacy compliance obligations for 2023,\(^1\) despite having been short in its initial 2023 Year Ahead filing, which was due at the end of October 2022. With thousands of megawatts of new resources coming online and old resources retiring in California ahead of each summer, the supply of available Resource Adequacy can change significantly between the due date of a Year Ahead filing and the due date for each monthly filing.

\(^1\) CPA is awaiting a new resource to come on-line and receive CAISO registration by mid-July in order to include it in monthly compliance filing for September 2023.
As it stands under the new CPUC decision, if CPA is able to meet its 2024 Year Ahead filing (due end of October 2023), it will have the ability to file to expand by the end of this calendar year for service launch to new communities in 2025. If CPA misses the 2024 year ahead filing but then cures that deficiency in the individual months of 2024, and also complies with the Year Ahead 2025 filing due at in October 2024, then it could file an expansion plan at the end of 2024 for service launch to new communities in 2026.

Staff is currently confirming our understanding of the implications of the new CPUC decision, assessing the likelihood of adhering to some or all of the compliance deadlines given market dynamics, discussing regulatory strategies with other CCAs, and will be doing outreach to our interested cities to develop near and long-term strategy options in this area.

**Launch of Power Response Home**

Earlier this month CPA launched Power Response Home, a simple demand response program that is particularly suited for customers who traditionally have been underserved by the energy industry. Part of the Power Response family of programs, Power Response Home pays residential customers to reduce energy usage during times when energy is expensive without the need to install any special equipment or turn over control over their thermostat for automatic monitoring and adjustments.

Participants in Power Response Home simply get a text message or email announcing an energy saving event and then manually reduce their energy use with thermostat adjustments, turning off lights, delaying running of appliances, or unplugging devices not in use. Customers will get a bill credit of $2 per kWh saved and customers on low-income CARE or FERA rates or located within disadvantaged communities get an additional $20 incentive payment for signing up.

This program can help renters whose property owners won’t install new equipment because they would not receive the savings and/or low-income customers who can’t afford technology upgrades even if they are going to pay back in the long run. While open to all, CPA’s marketing of this program is particularly targeting those types of customers.
Monthly Financial Performance

In April 2023, the first month of implementation CPA’s 3-month interim rate increase, CPA recorded an operating gain of $35.3 million, slightly less than the budgeted operating gain of $37.5 million due to slightly higher than expected wholesale market electricity prices. With this positive monthly result, CPA has now recorded an operating gain of $656,000 for the fiscal year to date, $5.4 million more than the budgeted loss of $4.7 million. The monthly financial dashboard is provided as Attachment 1 to this report. CPA remains on track to contribute over $80 million to the net position consistent with the FY 2022/23 Amended Budget.

Customer Participation Rate and Opt Actions

As of June 26, 2023, CPA’s overall participation rate was 93%, unchanged from the previous month. CPA had 1,005,237 active customers, down 910 customers since the end of May. Opt-out levels for the month – 282 accounts through the fourth week of June – are down from May and lower than historical norms during the second quarter of the year. New accounts (“move-ins”) were lower than closed accounts (“move-outs”) by 1,009 customers in June, typical for the month but significantly higher than May; this seasonal difference is largely responsible for the monthly decline in active customers. Participation rates and active accounts by jurisdiction are provided in Attachment 2 of this report.

Customer Service Center Performance

Incoming calls to CPA’s Customer Service Center during June were steady compared to the previous month and slightly lower than typical months in the second quarter of the year. Through June 27, CPA received 1,281 calls compared to 1,638 calls in May and an average of 1,795 calls per month in the second quarter of previous years. 98% of calls were answered within 45 seconds, down from 99% in the previous month, and the average wait time was 7 seconds, up one second from the previous month.

Contracts Executed Under the Chief Executive Officer’s Authority

A list of non-energy contracts executed under the CEO’s signing authority is provided in Attachment 3. The list includes all open contracts as well as all contracts, open or completed, executed in the past 12 months.
ATTACHMENTS

1. Monthly Financial Dashboard – April 2023
2. Participation Rates by Jurisdiction
3. Non-Energy Contracts Executed under CEO’s Authority
### Summary of Financial Results

<table>
<thead>
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<th></th>
<th>Apr in $000,000’s</th>
<th>Year-to-Date</th>
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<td>Operating Revenues</td>
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<td>Revenues Less Energy Cost</td>
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<td>Operating Expenses</td>
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<td>Operating Income</td>
<td>35.3</td>
<td>0.7</td>
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<tr>
<td>Operating Income</td>
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<td>-6%</td>
<td>5.4</td>
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</table>

**Note:** Numbers may not sum up due to rounding.

In April 2023 CPA recorded an operating gain of $35.3 million, $2.2 million less than the budgeted operating gain of $37.5 million provided in the FY 2022/23 Amended Budget. April results were positively impacted by a retail electricity rate increase that went into effect on April 1, 2023, offset by energy costs that were slightly higher than budgeted. For the fiscal year to date (YTD), CPA recorded an operating gain of $656,000, $5.4 million more than the budgeted loss of $4.7 million.

YTD revenue and cost of energy is in line with the Amended Budget. YTD results have been positively impacted by the April 1 rate increase. YTD results were negatively impacted by the September 2022 heat wave, gas and energy price shocks in December 2022 and January 2023, higher than budgeted renewable energy costs, prior period costs recorded in the current fiscal year, and an accrued but yet to be assessed Resource Adequacy compliance penalty. Operating costs were 25% below budget for the YTD primarily as a result of lower spending on administrative and other service costs and the non-utilization of contingencies.

As of April 30, 2023, CPA had $63.9 million in unrestricted cash and cash equivalents and $79.853 million available in its bank line of credit. In June 2023, CPA and JP Morgan executed an amendment to CPA’s credit agreement, increasing the line of credit from $80 million to $160 million and extending the term of the agreement to March 31, 2024.

CPA is in sound financial health and in compliance with its bank and other credit covenants. CPA remains on track to contribute $84 million to the net position in FY 2022/23 consistent with the FY 2022/23 Amended Budget.

### Definitions:
- **Accounts:** Active Accounts represents customer accounts of active customers served by CPA per Calpine Invoice.
- **Participation Rate %:** Participation Rate represents active accounts divided by eligible CPA accounts.
- **YTD Sales Volume:** Year-to-date sales volume represents the amount of energy (in gigawatt hours) sold to retail customers.
- **Revenues:** Retail energy sales less allowance for doubtful accounts.
- **Cost of energy:** Cost of energy includes direct costs incurred to serve CPA’s load.
- **Operating expenses:** Operating expenditures include general, administrative, consulting, payroll, and other costs required to fund operations.
- **Net operating income:** Represents the difference between revenues and expenditures before interest income and expense, and capital expenditures.
- **Cash and Cash Equivalents:** Includes bank accounts and marketable securities with maturities of less than 90 days.
- **Year to date (YTD):** Represents the fiscal period beginning July 1, 2022.
## OVERALL CUSTOMER STATUS REPORT

**June 26, 2023**

### PARTICIPATION BY CITY AND COUNTY

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<tr>
<th>Jurisdiction</th>
<th>Preferred Energy Option</th>
<th>Active Accounts</th>
<th>Participation %</th>
<th>Lean %</th>
<th>Clean %</th>
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<td>Simi Valley</td>
<td>Lean</td>
<td>43,266</td>
<td>89.4%</td>
<td>99.7%</td>
<td>0.1%</td>
<td>0.2%</td>
</tr>
<tr>
<td>South Pasadena</td>
<td>100% Green</td>
<td>11,639</td>
<td>95.1%</td>
<td>3.8%</td>
<td>0.7%</td>
<td>95.5%</td>
</tr>
<tr>
<td>Temple City</td>
<td>Lean</td>
<td>12,554</td>
<td>95.7%</td>
<td>99.8%</td>
<td>0.1%</td>
<td>0.2%</td>
</tr>
<tr>
<td>Thousand Oaks</td>
<td>100% Green</td>
<td>44,390</td>
<td>83.3%</td>
<td>8.0%</td>
<td>1.6%</td>
<td>90.5%</td>
</tr>
<tr>
<td>Ventura</td>
<td>100% Green</td>
<td>43,803</td>
<td>88.8%</td>
<td>4.8%</td>
<td>1.6%</td>
<td>93.6%</td>
</tr>
<tr>
<td>Ventura County</td>
<td>100% Green</td>
<td>33,331</td>
<td>86.6%</td>
<td>6.4%</td>
<td>1.4%</td>
<td>92.2%</td>
</tr>
<tr>
<td>West Hollywood</td>
<td>100% Green</td>
<td>26,462</td>
<td>96.8%</td>
<td>2.4%</td>
<td>0.4%</td>
<td>97.2%</td>
</tr>
<tr>
<td>Westlake Village</td>
<td>Lean</td>
<td>3,738</td>
<td>88.3%</td>
<td>99.5%</td>
<td>0.1%</td>
<td>0.5%</td>
</tr>
<tr>
<td>Whittier</td>
<td>Clean</td>
<td>31,187</td>
<td>94.0%</td>
<td>1.9%</td>
<td>98.0%</td>
<td>0.2%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>1,005,327</strong></td>
<td></td>
<td></td>
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</table>

### OVERALL PARTICIPATION BY ENERGY OPTION

<table>
<thead>
<tr>
<th>Preferred Energy Option</th>
<th>Participation %</th>
</tr>
</thead>
<tbody>
<tr>
<td>100% Green</td>
<td>93.0%</td>
</tr>
<tr>
<td>Clean</td>
<td>94.3%</td>
</tr>
<tr>
<td>Lean</td>
<td>92.6%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>93.1%</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Energy Option</th>
<th>Active Accounts</th>
<th>Participation %</th>
</tr>
</thead>
<tbody>
<tr>
<td>100% Green</td>
<td>624,450</td>
<td>62.1%</td>
</tr>
<tr>
<td>Clean</td>
<td>258,382</td>
<td>25.7%</td>
</tr>
<tr>
<td>Lean</td>
<td>122,495</td>
<td>12.2%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1,005,327</strong></td>
<td><strong>100.0%</strong></td>
</tr>
<tr>
<td>Vendor</td>
<td>Purpose</td>
<td>Month</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>-------------------------------------------------------------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>Snowflake Inc.</td>
<td>Cloud-Native Elastic Data Warehouse Service</td>
<td>June 2023</td>
</tr>
<tr>
<td>Baker Tilly</td>
<td>Financial audit services</td>
<td>June 2023</td>
</tr>
<tr>
<td>IHS Market</td>
<td>Subscription for CAISO forecasts</td>
<td>June 2023</td>
</tr>
<tr>
<td>Fraser</td>
<td>Marketing contract (final renewal)</td>
<td>June 2023</td>
</tr>
<tr>
<td>Swanson Martin Bell</td>
<td>Legal Services Agreement (general liability)</td>
<td>May 2023</td>
</tr>
<tr>
<td>LinkedIn</td>
<td>Subscription for recruiting platform</td>
<td>April 2023</td>
</tr>
<tr>
<td>Lattice</td>
<td>Renewal for Performance management software</td>
<td>April 2023</td>
</tr>
<tr>
<td>AN Catering</td>
<td>Fifth anniversary lunch venue</td>
<td>April 2023</td>
</tr>
<tr>
<td>Polsinelli, LLP</td>
<td>Legal Service Agreement (Employment, Compliance, General Legal Support related to Commercial Liability, Risk, and Mitigation issues)</td>
<td>April 2023</td>
</tr>
<tr>
<td>Chapman &amp; Cutler, LLP</td>
<td>Legal Services (CPA's Credit Agreement)</td>
<td>April 2023</td>
</tr>
<tr>
<td>Salesforce</td>
<td>Additional licenses for Stakeholder Relationship Management application subscription</td>
<td>April 2023</td>
</tr>
<tr>
<td>Accuweather</td>
<td>Weather forecasting</td>
<td>March 2023</td>
</tr>
<tr>
<td>goodpr</td>
<td>Event planning services</td>
<td>March 2023</td>
</tr>
<tr>
<td>Shute, Mihaly &amp; Weinberger, LLP</td>
<td>Legal Service Agreement (Regulatory, Administrative, Environmental, Energy Procurement, Public Contracting, Public Entity Governance Laws, Issues and/or Proceedings)</td>
<td>March 2023</td>
</tr>
<tr>
<td>Davis Wright Tremaine</td>
<td>Legal services (regulatory)</td>
<td>March 2023</td>
</tr>
<tr>
<td>Ntooitive</td>
<td>Website development</td>
<td>March 2023</td>
</tr>
<tr>
<td>Municipal Capital Markets</td>
<td>GIC brokerage services</td>
<td>February 2023</td>
</tr>
<tr>
<td>Clear Language Company</td>
<td>Minute transcription for board meetings</td>
<td>January 2023</td>
</tr>
<tr>
<td>Mercer</td>
<td>Retention incentive program development</td>
<td>January 2023</td>
</tr>
<tr>
<td>SBCCOG</td>
<td>Satellite Board meeting venue</td>
<td>January 2023</td>
</tr>
<tr>
<td>Wrike</td>
<td>Project management software</td>
<td>January 2023</td>
</tr>
<tr>
<td>Ironclad</td>
<td>Contract lifecycle management platform</td>
<td>January 2023</td>
</tr>
<tr>
<td>PrimeGov</td>
<td>Board and committee meeting agenda management software</td>
<td>December 2022</td>
</tr>
<tr>
<td>DERNetSoft, Inc.</td>
<td>Business customer engagement reporting tool</td>
<td>December 2022</td>
</tr>
<tr>
<td>Ion Objects, Inc.</td>
<td>IT consulting</td>
<td>December 2022</td>
</tr>
</tbody>
</table>
Clean Power Alliance
Non-energy contracts executed under Chief Executive Officer authority
Rolling 12 months -- Open contracts shown in Bold

<table>
<thead>
<tr>
<th>Vendor</th>
<th>Purpose</th>
<th>Month</th>
<th>NTE Amount</th>
<th>Status</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>AiQueous, LLC</td>
<td>Salesforce implementation</td>
<td>December 2022</td>
<td>$7,395</td>
<td>Completed</td>
<td>Amendment to update scope for project completion</td>
</tr>
<tr>
<td>ZGlobal</td>
<td>Engineering services</td>
<td>December 2022</td>
<td>$50,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Pinnacle Advocacy</td>
<td>Lobbying services</td>
<td>December 2022</td>
<td>$66,652</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Omni Government Relations</td>
<td>Lobbying services</td>
<td>December 2022</td>
<td>$82,492</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Museum of Ventura County</td>
<td>Event space rental for City Manager Lunch</td>
<td>December 2022</td>
<td>$825</td>
<td>Completed</td>
<td></td>
</tr>
<tr>
<td>S&amp;P</td>
<td>Credit assessment</td>
<td>December 2022</td>
<td>$37,500</td>
<td>Active</td>
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<tr>
<td>Meltwater</td>
<td>Media analytics and monitoring services</td>
<td>November 2022</td>
<td>$13,750</td>
<td>Active</td>
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<tr>
<td>Cision</td>
<td>Media/PR wire distribution services</td>
<td>November 2022</td>
<td>$2,240</td>
<td>Active</td>
<td></td>
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<tr>
<td>Sigma</td>
<td>Data analytics tool</td>
<td>October 2022</td>
<td>$13,000</td>
<td>Active</td>
<td></td>
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<tr>
<td>Language Line</td>
<td>Translation services</td>
<td>October 2022</td>
<td>$50,000</td>
<td>Active</td>
<td></td>
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<tr>
<td>Langan</td>
<td>GIS services</td>
<td>October 2022</td>
<td>$78,500</td>
<td>Active</td>
<td>Second renewal term</td>
</tr>
<tr>
<td>Mercar</td>
<td>Compensation and benefits study refresh</td>
<td>September 2022</td>
<td>$75,000</td>
<td>Completed</td>
<td></td>
</tr>
<tr>
<td>Pickit</td>
<td>Digital asset library</td>
<td>September 2022</td>
<td>$2,900</td>
<td>Active</td>
<td></td>
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<tr>
<td>Salesforce</td>
<td>Stakeholder Relationship Management</td>
<td>August 2022</td>
<td>$15,300</td>
<td>Active</td>
<td>Amendment to reduce placement fees to 25% of starting salary of exclusively referred candidate</td>
</tr>
<tr>
<td>Oscar Associates</td>
<td>Recruiting Services</td>
<td>August 2022</td>
<td>N/A</td>
<td>Active</td>
<td>Renewal</td>
</tr>
<tr>
<td>Burke, Williams, Sorenson, LLP</td>
<td>Legal Services Agreement (Brown Act, public entity governance issues and other legal services)</td>
<td>July 2022</td>
<td>$100,000</td>
<td>Active</td>
<td>Renewal</td>
</tr>
<tr>
<td>Hall Energy Law PC</td>
<td>Energy Procurement Counsel</td>
<td>July 2022</td>
<td>$125,000</td>
<td>Active</td>
<td>Renewal</td>
</tr>
<tr>
<td>Helpmates</td>
<td>Temporary staffing services</td>
<td>July 2022</td>
<td>N/A</td>
<td>Active</td>
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<tr>
<td>Adobe Inc.</td>
<td>AdobeSign Secure Electronic Signature Service</td>
<td>June 2022</td>
<td>$3,200</td>
<td>Active</td>
<td>Renewal</td>
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<tr>
<td>OpenPath</td>
<td>New Office Keycard Access Control System</td>
<td>January 2021</td>
<td>$1,500</td>
<td>Active</td>
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<tr>
<td>Crown Castle Fiber LLC</td>
<td>New Office Dedicated Internet Access Service</td>
<td>September 2020</td>
<td>$18,600</td>
<td>Active</td>
<td></td>
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<tr>
<td>NextLevel Internet, Inc.</td>
<td>New Office High Speed Internet Service</td>
<td>September 2020</td>
<td>$6,936</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Windstream Services, LLC</td>
<td>New Office Telephone Service</td>
<td>September 2020</td>
<td>$14,095</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Zero Outages</td>
<td>New Office Security, Firewall, &amp; Wi-Fi Service</td>
<td>September 2020</td>
<td>$7,608</td>
<td>Active</td>
<td></td>
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</tbody>
</table>